Radical Antislavery and Personal Liberty Laws
In Antebellum Ohio, 1803-1857

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Abstract

This study examines Ohio abolitionists' struggle to adopt personal liberty laws between 1803 and 1857. During the first three decades of the nineteenth century, despite powerful white supremacist forces, a significantly pro-freedom fugitive slave policy prevailed in Ohio. As militant abolitionism emerged in the early 1830s and radical abolitionists called on the state legislature to provide stronger legal protection for fugitive slaves and free blacks, however, anti-abolitionists sought to establish a strong proslavery fugitive slave policy in order to suppress radical abolitionism.

In 1839, the Kentucky legislature's demand for a more effective fugitive slave law acted as the catalyst for the Democratic-controlled Ohio legislature to pass a comprehensive fugitive slave law. The statute not only provided for strong state action in recapturing and removing fugitive slaves but also sought to neutralize abolitionists' aid or rescue operations.

The 1839 Fugitive Slave Law, born of an anti-abolitionist backlash, had the unintended consequence of inspiring intense antislavery agitation for its repeal in the early 1840s. Yet although the law was repealed in 1843, its repeal did not lead to the adoption of follow-up measures for the protection of blacks, fugitive and free, as was becoming common in other Northern states. From 1843 on, the struggle to adopt personal liberty laws defined antislavery politics in Ohio. Unlike the general trend across the North, in which Free Soil and Republican political antislavery focused on the restriction of slavery from the western territories, the slave-centered abolitionism of the personal liberty politics remained dominant in Ohio. Even when sectional conflicts escalated and Republican leaders stressed the necessity of political

compromise and conciliation, Ohio radicals persisted in radical antislavery campaigns to repudiate the federal Fugitive Slave Law and adopt personal liberty laws.

Anti-abolitionists' hostility to abolitionism successfully combined with their fear of radicalism of personal liberty laws to frustrate their adoption in Ohio until 1857. Nevertheless, the development of the personal liberty politics pressed for the realignment of political forces, finally breaking down the walls of anti-abolitionism and leading to the passage of personal liberty laws in 1857.

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Contents

Chapter

Introduction Personal Liberty Laws, Epitome of Radical Abolitionism……1

One The Emergence and Decline of Personal Liberty Politics in Early Ohio……..25

Two "Bill of Abominations": The Ohio Fugitive Slave Law of 1839 and Retrogression of the State Fugitive Slave Policy……..…74

Three "Take your pound of flesh, but not one drop of blood": The Repeal Movement, Source of Radical Antislavery Politics……...117

Four "Freemen's Declaration of Independence": The Ohio Personal Liberty Laws of 1857……..171

Epilogue Pursuit of Personal Liberty Laws and the Revolutionized Civil War……..234

Bibliography……243

Introduction

Personal Liberty Laws, Epitome of Radical Abolitionism

The personal liberty laws were statutes passed by northern state legislatures, during the existence of the federal Fugitive Slave Laws of 1793 and 1850. The purpose of personal liberty laws was to provide adequate legal safeguards for the personal liberty of the alleged fugitive slaves (as well as free blacks), including the privilege of the writ of habeas corpus, trial by jury, and the right of appeal, which fugitive slave laws denied. At first, personal liberty laws originated from the humanitarian concern that the alleged fugitive slaves should be guaranteed those basic legal protections as a safeguard against false accusations. As militant abolitionism emerged and the sectional conflicts between the North and the South escalated, however, the nature of the personal liberty laws fundamentally changed.

Increasingly, those laws sought to interfere with the execution of the federal Fugitive Slave Laws by frustrating the legal operations of slaveholders and their agents in the recapture and removal of fugitive slaves. In their most radical form, those laws questioned the exercise of common law or constitutional recaption rights of slaveholders, and effectively denied their property rights in slaves. In short, the personal liberty laws served as the most formidable antislavery weapon by which antislavery forces attacked the slavery interests in the North and the South and, ultimately, created a serious sense of insecurity and humiliation among slaveholders in the South. In addition to their importance as an antislavery weapon, the personal liberty laws were all the more significant because they were the products of state action demonstrating that Northern dissatisfaction and hostility were not merely confined to a few radical abolitionists.

This dissertation explores the emergence, transformation, resistance to, and implications of those laws through the case of Ohio. The overall intention of this study is to restore the importance of personal liberty laws in the evolution of antislavery politics of Ohio, which have been denied because of the longstanding assumption that the personal liberty laws of the North were marginal, unsuccessful, and moderate (or conservative). However, Ohio abolitionists' antislavery struggle to repeal the state Fugitive Slave Law and adopt personal liberty laws remained dominant in the antislavery movement, intensifying the politics of personal liberty. In short, this study argues that personal liberty laws are keys to the full comprehension of the growth of the abolitionist movement and the radicalization of antislavery politics.

By "the politics of personal liberty" or "personal liberty politics" I mean the social and political resistance to the exercise of common law or constitutional recaption rights of slaveholders and the antislavery struggle to assign strategic priority to the protection of the freedom of fugitive slaves and free blacks through the security of legal safeguard such as the right of trial by jury, the writ of *habeas corpus*, and the rights of testimony and appeal, or even through physical force. "Personal liberty politics" also therefore refers to campaign for personal liberty laws which were designed to challenge and undermine the federal fugitive slave legislation. The politics of personal liberty thus related to the legislative battle regarding state and federal fugitive slave policy, judicial decisions on the fugitive slave and anti-kidnapping cases, and even illegal aid or rescue operations of abolitionists. At many crucial moments, personal liberty politics shaped the nature and direction of Ohio's antislavery movement.

The personal liberty laws took various forms. Until about 1840, personal liberty laws typically took the form of anti-kidnapping laws, the earliest and most limited type of state legislation against slavecatchers and kidnappers. In order to prevent illegal kidnapping, those

laws made the unauthorized removal of blacks – in other words, removal without first proving in court the right of claimants to remove them – a serious crime. Even though these anti-kidnapping laws were clearly drafted to protect only free blacks, not to obstruct slaveholders in their operation of recapturing runaway slaves, those laws also functioned as a legal tool to prevent fugitives from being removed arbitrarily from the states. If slaveholders did not comply with the state procedures, they could be prosecuted for the crime of kidnapping even if they carried off their runaway slaves. The decisive difference between anti-kidnapping laws and outright personal liberty laws was that while anti-kidnapping laws were designed to prevent the illegal kidnapping of free blacks, person liberty laws were a deliberate attempt to interfere with even legal slavecatching. Indiana's anti-kidnapping statute of 1816, entitled "An Act to prevent Manstealing" criminalized the removal of blacks without complying with state laws. Ohio's anti-kidnapping laws of 1819 and 1831defined illegal kidnapping as a high misdemeanor.[1]

Personal liberty laws developed in roughly three phases, with the moments of transition being the 1842 U.S. Supreme Court decision in *Prigg* v. *Pennsylvania* and the adoption of the federal Fugitive Slave Law of 1850.[2] Before *Prigg* v *Pennsylvania*, personal liberty laws were intended to secure legal protections such as the writ of *habeas corpus* and the right of trial by jury to alleged fugitive slaves. Pennsylvania's personal liberty law of 1826 was the first to interfere with the administration of federal fugitive legislation for the recovery and protection of property in fugitive slaves. In 1837 Massachusetts passed "an Act to restore the Trial by Jury, on questions of personal freedom." In 1838 Connecticut provided that on appeal fugitive slaves had

[1] *Laws of the state of Indiana, passed at the first session of the General Assembly held at Corydon on the first Monday in November in the year one thousand eight hundred and sixteen* (Corydon: Cox and Nelson, Printers, 1817), 150-52; An Act to punish kidnapping, 17 Laws of Ohio 56 (1819); An Act to prevent Kidnapping, 29 Laws of Ohio 442 (1831).

[2] *Prigg* v. *Pennsylvania*, 41 U.S. (16 Pet.) 539 (1842).

a right to trial by jury. In 1840 Vermont and New York passed the first full-fledged personal liberty acts "to extend the right of trial by jury." These laws not only ensured the right of trial by jury but also provided attorneys to defend fugitive slaves.[3]

After the *Prigg* decision in 1842, in which the U.S. Supreme Court ruled that states could not adopt legislation regulating the return of fugitive slaves and that the federal government had the sole responsibility of executing the federal Fugitive Slave Law of 1793, some Northern state legislatures devised a new type of personal liberty laws which mainly prohibited state officials from aiding slaveholders in the recapture and removal of fugitive slaves. They also prohibited state courts from accepting jurisdiction in a case involving fugitive slaves. In short, the core principle of the new personal liberty laws was noncooperation.[4] Such laws were passed in Massachusetts (1843), Vermont (1843), Connecticut (1844), New Hampshire (1846), Pennsylvania (1847), and Rhode Island (1848).[5]

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[3] An Act to give effect to the provisions of the constitution of the United States, relative to fugitives from labor, for the protection of free people of color, and to prevent kidnapping, *Acts of the General Assembly of the Commonwealth of Pennsylvania* (Harrisburg: Cameron & Krause, 1826), 150-55; An Act to Restore the Trial by Jury, on Questions of Personal Freedom, *Massachusetts Acts*, 1837, chap. 221; An Act for the fulfillment of the obligations of this State, imposed by the Constitution of the United States, in regard to persons held to service or labor in one State escaping into another, and to secure the right of Trial by Jury, in the cases herein mentioned, *The Public Statute Laws of the State of Connecticut, Compiled in Obedience to a Resolve of the General Assembly, Passed in May, Eighteen Hundred and Thirty-Eight, To Which is Prefixed The Declaration of Independence, Constitution of the United States, and Constitution of the State of Connecticut* (Hartford: John L. Boswell, Publisher, 1839), chap. 2, 571-74; An Act to extend the right of trial by jury, *Acts and Resolves passed by the Legislature of the State of Vermont, at Their Third Session*, 1840, 13; An Act to extend the right of trial by jury, *Laws of New York*, 1840, 174.

[4] Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (Baltimore: The Johns Hopkins University Press, 1974), 94-106.

[5] An Act further to protect Personal Liberty, *Massachusetts Session Laws*, 1843, chap. 69; An Act, for the Protection of Personal Liberty, *Vermont Session Laws*, 1843, chap. 15; An Act for the Protection of Personal Liberty, *Connecticut Session Laws*, 1844, chap. 27; An Act for the further Protection of Personal Liberty, *Laws of New Hampshire*, 1846, chap. 315; An Act to

The federal Fugitive Slave Law of 1850 provoked the enactment of the most aggressive personal liberty laws. In the face of the completely proslavery Fugitive Slave Law, abolitionists and radical antislavery activists attempted to intervene in the reclamation of runaways in the more aggressive way and, ultimately, nullify the federal law by radicalizing the personal liberty laws. The new personal liberty laws almost invariably prevented state jails and prisons from being used for the detention or imprisonment of fugitive slaves. They also tried to penalize state officers and citizens for voluntarily engaging in slavecatching. In addition, they often forbade state judges to issue certificate of removal and reinforced their anti-kidnapping clause with severe penalties. The privileges of jury trial, the writ of habeas corpus, and state-sponsored attorneys were firmly guaranteed for the protection of the alleged fugitive slaves. Such acts were passed in Connecticut (1854), Rhode Island (1854), Massachusetts (1855, 1858), Michigan (1855), Maine (1855, 1857), Wisconsin (1857), Ohio (1857), and Vermont (1858).[6]

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prevent kidnapping, preserve the public peace, prohibit the exercise of certain powers heretofore exercised by judges, justice of the peace, aldermen and jailors in this commonwealth, and to repeal certain slave laws, *Pennsylvania Session Laws*, 1847, 206-08, No. 159; An Act further to protect Personal Liberty, *Acts and Resolves of Rhode Island*, 1848, 12. For checklist of the personal liberty laws of all northern states, see Morris, *Free Men All*, 219-22. But this checklist needs to be taken with caution because some laws in the checklist which Morris regarded as personal liberty laws were actually fugitive slave laws or just kidnapping laws.

[6] An Act for the Defense of Liberty in this State, *Public Acts of Connecticut*, 1854, 80; An Act in amendment of an act entitled "An Act further to protect personal liberty," *Laws of Rhode Island*, 1854, 22; An Act to protect the Rights and Liberties of the People of the Commonwealth of Massachusetts, *Laws of Massachusetts*, 1855, 924; 1858, 151; An Act to protect the rights and liberties of the inhabitants of this State, *Laws of Michigan*, 1855, 415; An Act further to protect personal liberty, *Public Laws of the State of Maine*, 1855, 28; 1857, 38; Of the Writ of Habeas Corpus Relative to Fugitive Slaves, *The Revised Statutes of the State of Wisconsin* (Chicago, Ill.: W.B. Keen, 1858), 912-14; An Act to prohibit the confinement of fugitives from slavery in the jails of Ohio; An Act to prevent Slaveholding and Kidnapping in Ohio; An Act to prevent kidnapping, *Laws of Ohio*, 1857, 170, 186, 221-22; An Act to Secure Freedom to All Persons within this State, *Laws of Vermont*, 1858, 42-44.

Southern proslavery spokesmen and most Northern Democrats repeatedly charged that the personal liberty laws of the North violated constitutional obligations and threatened the property rights of slaveholders. As a consequence, they asserted, the personal liberty laws created the secession crisis. Both the Douglas and Breckenridge Democratic platforms of 1860 condemned the laws as "hostile in character, subversive of the Constitution, and revolutionary in their effect."[7] In his last annual message to Congress of December 3, 1860, President James Buchanan blamed the crisis of 1860 on the personal liberty laws of the North, warning that the South "would be justified in revolutionary resistance to the Government of the Union" if the northern states did not revoke their personal liberty laws denying "the right of the master to have his slave who has escaped from one State to another restored and 'delivered up' to him, and of the validity of fugitive-slave law enacted for this purpose."[8] In justifying secession in the South Carolina Declaration of Causes of Secession, furthermore, the secessionists in South Carolina presented the passage of personal liberty laws in the North as a decisive cause of the breakdown of the Union.[9]

The personal liberty laws and, in particular, the increasingly radical measures passed in the 1850s were indeed important elements in the national crisis. The personal liberty laws had a considerable impact on the intensification of sectionalism and the ultimate breakdown of the

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[7] Kirk H. Porter and Donald Bruce Johnson, *National Party Platforms, 1840-1964* (Urbana: University of Illinois Press, 1966), 30-31.

[8] James D. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897*, 10 vols. (Washington: Government Printing Office, 1897) 5: 630, 638.

[9] "Declaration of the Immediate Causes Which Induce and Justify Secession of South Carolina from the Federal Union," *Journal of the Convention of the People of South Carolina, Held in 1860-61* (Charleston, S.C., 1861), 325-31; South Carolina, Convention, *Declaration of the Immediate Causes Which Induce and Justify Secession of South Carolina from the Federal Union; and the Ordinance of Secession* (Charleston: Evans & Cogswell, Printers to the Convention, 1860).

Union. The secessionists' claims were neither simple excuses nor empty political rhetoric to justify their secession from the Union. Fugitive slaves and the slavecatchers chasing them into non-slave states caused persistent friction between northern and southern states from the earliest years of the American Republic. Antislavery advocates and abolitionists constantly petitioned their state legislatures for the adoption of anti-kidnapping laws and stronger personal liberty laws. Unlike the illegal aid or rescue operations of abolitionists, the personal liberty laws were legitimate products by the majority of the state legislatures and, thus, represented the altered Northern attitude toward the South, which was uncooperative and hostile. Slaveholders felt betrayed by the Northern failure to honor the federal compromise by violating their constitutional rights and property rights in slaves. As a consequence, personal liberty laws triggered a substantial sense of crisis in the South which was rooted in deep suspicion of the Northern positions regarding fugitive slaves and abolitionists. In short, the personal liberty laws and their radicalization compelled slaveholders to take the extreme step of secession from the Union.

My thesis is that antislavery struggle over the personal liberty laws was the most radical, persistent, and effective of the abolitionist strategies against the slavery interests in antebellum America. Indeed, personal liberty laws and the antislavery struggles for their adoption constituted the most persistent and concerted political campaign of antislavery forces. Nevertheless, historians have not adequately examined the personal liberty laws passed in the North. It is strange and surprising that the personal liberty laws have not been seriously dealt with in relation to abolitionist movement in spite of the fact that the laws were abolitionists' most tangible victory in their battles for securing the freedom of blacks and at the same time for challenging slaveholders' rights over slaves. Historians have generally not treated personal

liberty laws as concrete radical programs or political campaigns, still less as an aggressive abolitionist strategy, but instead have downplayed their importance, depicting them as ineffective or unsuccessful. In short, they have neglected to see the personal liberty laws in light of the development or transformation of the abolitionist movement. As a result they have failed to examine to what extent the antislavery struggles over the personal liberty laws radicalized state-level antislavery politics. As a consequence, the personal liberty laws have been marginalized in addressing the intensification of sectionalism, too.

This study is an attempt to fill this historiographical gap and shed new light on the role and impact of personal liberty laws. In doing so, it intends to provide another meaningful window into the intensification of sectionalism and radicalization of antislavery politics. There is much we do not know or do not fully appreciate, not so much about the content of the personal liberty laws as about the evolution of antislavery politics surrounding the personal liberty laws. This void stems in part from historians' enduring symbolization of the personal liberty laws as an ineffective statutory event decreed by legislators. In other words, historians have focused on the personal liberty laws as weak and symbolic, concentrating instead on violent and extralegal resistance to the Slave Power. But the passage of personal liberty laws both reflected the growing radicalization of broad Northern publics along the lines of personal liberty politics, and in provoking federal challenges, contributed to further radicalization of antislavery politics.

Four decades ago, historian Norman Rosenberg asserted that most proponents of the personal liberty law regarded the statutes as "a form of *symbolic* resistance to southern violations of individual liberties, incursions upon the authority of free state governments, and aggressions in the territories" (*italics* mine).[10] His assertion conveys the false impression that the proponents

[10] Norman L. Rosenberg, "Personal Liberty Laws and Sectional Crisis: 1850-1861," *Civil War History* 17, no. 1 (March 1971), 43.

of the laws did not consider the personal liberty laws the practical strategic response to the Southern aggression, but just a perfunctory action to ameliorate aggravating political situation or to appease the Northerners. In other words, he implies that the personal liberty laws were an impractical invention of moderates or conservatives seeking to express their discontent over Southern aggression. Judging from his implication, in addition, the enactment of the laws was an end itself, and few viewed them as a means of effectively frustrating the operation of slaveholders through the federal Fugitive Slave Laws.

However, Rosenberg's appraisal can hardly do justice to the personal liberty laws. From the earliest years of the American Republic, anti-kidnapping laws, as a mild form of personal liberty law, had served as an effective tool to prevent the illegal kidnapping of blacks by slavecatchers. After the emergence of militant abolitionism, personal liberty laws, as a practical strategy of abolitionists, had been re-designed to interfere with the administration of the federal fugitive slave legislation and the laws, ultimately, radicalized antislavery politics. Furthermore, personal liberty laws originated from radical humanitarian concern about blacks' plight under the constant threat of kidnapping and enslavement, and, at the same time, in abolitionists' espousal of "higher law" doctrine. In these respects, they were not merely rough-and-ready or expedient products of the state legislatures in response to Southern aggression or the growing sectional conflicts. In other words, the adoption of personal liberty laws was not a meaningless statutory event decreed by the state legislatures. Rather, it was a resolute political manifestation of the Northerners against proslavery aggression and a significant victory of abolitionists dedicated to racial equality and abolition of slavery.

Investigation of the antislavery struggles over personal liberty laws allows to assess the political impact of abolitionism, to illustrate the interaction and concerted efforts of radical and

political abolitionists, and to finally size up the political limits and possibilities of antislavery radicalism. For one thing, personal liberty laws fundamentally embodied the fusion of political intention to check the slavery interests and abolitionists' divine will to realize "higher law." By adopting such personal liberty laws, abolitionists intended to not merely protect fugitive slaves but also undermine the system of slavery that enslaved blacks, by repudiating slaveholders' property rights in slaves. Secondly, the history of personal liberty laws calls into question the distinction between radical and political abolitionists. Both groups of abolitionists realized the need and importance of personal liberty laws and made a concerted effort to compel state legislatures to take a quick action to pass them. In particular, in Ohio, political abolitionists, along with moral abolitionists, dedicated themselves to the intensification of personal liberty politics. Thirdly, William Lloyd Garrison realized the revolutionary aspect of the personal liberty laws when he asserted that personal liberty laws were "tantamount to disunion."[11] Indeed, the success and failure of personal liberty laws represented a litmus test for the political possibilities of antislavery radicalism. Since abolitionists attempted to implant the principle of human equality and denial of property rights in slaves into the laws, their political and constitutional implications were explosive. Therefore, a close examination of the personal liberty laws could show the progress or retreat of political and social consensus in the North about the political and legal rights of blacks and the acceptance of federal compromise regarding fugitive slaves. In so doing, it could size up to what extent abolitionist principles of the personal liberty laws helped create instability and tension within the system of national institutions that had served as an arena for the peaceful resolution of sectional conflicts.

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[11] Quoted in Louis Filler, *Crusade Against Slavery: Friends, Foes, and Reforms, 1820-1860* (Algonac, Michigan: Reference Publication, 1986), 209.

The most vigorous proponent of the uselessness of personal liberty laws has been Stanley W. Campbell. In *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (1970), Campbell concluded that the personal liberty laws of the North had little effect upon the will or ability of federal officials to enforce the Fugitive Slave Law. In short, his main point was that the federal Fugitive Slave Law was both enforceable and enforced. Ignoring the original intent of personal liberty legislation and pointing out excessively its conformity to the federal Fugitive Slave Law, Campbell put special emphasis on the Northern acquiescence in the enforcement of the Fugitive Slave Law. He also contends that the personal liberty laws did not prevent a single slave from being returned to bondage.[12]

However, Campbell's analysis rests entirely on the limited data of litigated cases which dealt with a small percentage of fugitive slaves. Whereas he provides the 332 fugitive slave cases between 1850 and 1860 in most of which slaveholders were successful in recapturing their fugitive slaves, he does not pay attention to the larger numbers of fugitives or to the vigilant activities of free blacks and abolitionists in virtually nullifying the Fugitive Slave Law. Further, he often overlooked nuances and countervailing tendencies in the antebellum North. Although there was acquiescence in slavery or indifference to its abolition in the North because of Unionism, economic interests, and racial fears, the personal liberty laws shows that the far greater complexity existed in the northern politics about fugitive slave question. In addition, Campbell regards the personal liberty laws mainly as a sort of fugitive slave law stipulating state rendition procedure, an assumption that belies the original intent of personal liberty legislation. That is to say, Campbell's analysis for the most part disregards or minimizes northern legal

[12] Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (New York: Norton, 1968).

developments regarding blacks' rights and in some respects indeed misunderstands the meaning of personal liberty laws.

A far better treatment of the personal liberty laws – and only book-length study to date – is Thomas D. Morris's *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (1974). One important reason for the neglect is that historians believed that personal liberty laws were too marginal and ineffective to make an impact on the whole picture of the growing antislavery movements and the upsurge of sectional conflicts. In particular, this belief was closely associated with the conviction that abolitionism and fugitive slave issue increasingly paled in significance compared with the rise of the political antislavery dedicated to free-soilism rather than the slave-centered abolitionism in the 1840s and 1850s.[13] Even if abolitionism and fugitive slave questions were supposed to remain strong in the antislavery movements, furthermore, historians have focused on the illegal and violent aid and rescue operations of abolitionists, ignoring their persistent political campaigns, or legislative struggles, to adopt personal liberty laws.[14] It seems that the legitimate sphere of the adoption movement for personal liberty laws have not been considered proper or important in the development of abolitionist movements.

Morris' thorough legislative history of the personal liberty laws of the North repudiates Campbell's understanding of the original intent of the legislation. Morris demonstrates clearly in *Free Men All* that the purpose of the personal liberty legislation was to realize the Revolutionary ideals which posited the equality of all humankind and the primacy of civil liberties. Examining

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[13] Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relationships to Slavery*, completed and edited by Ward M. McAfee (New York: Oxford University Press, 2001), 245.

[14] On the acceptance of violence as an important tactic in the antislavery circle, see John R. McKivigan and Stanley Harrold, ed., *Antislavery Violence: Sectional, Racial, and Cultural Conflict in Antebellum America* (Knoxville: The University of Tennessee Press, 1999).

"the ways people translated into law the [Revolutionary] presumption that all persons are born free and cannot be deprived of that freedom except by due process of law, even though they might be slaves," Morris contends persuasively that the personal liberty laws were enacted to protect free blacks from kidnapping and enslavement, to vindicate a legal presumption of freedom, and ultimately to eliminate slavery. In addition, by tracing the origin of the personal liberty laws back to the 1780s, he provides a sense of continuity of the laws in the North.[15]

Campbell's thesis regarding the effectiveness and success of the Fugitive Slave Law of 1850 was challenged in James Oliver Horton and Lois E. Horton's study of African Americans' reaction to the Fugitive Slave Law of 1850. They described African Americans' militant resistance to the law, which ultimately made the law ineffectual. Facing the growing threat of re-enslavement by the open assault of the Fugitive Slave Law, they showed, African Americans organized many vigilance committees and political meetings that denied the law and even urged slaves to rise in open rebellion. By pointing out that African Americans came to realize that "the abolition of slavery was more than a matter of protecting family and loved ones, it was a prerequisite to equal treatment for blacks under American law," James and Lois Horton implied that there was an increasing perception that the legal and constitutional program for the personal liberty and equality of African Americans should be made and enforced.[16]

Larry Gara also questioned the effective enforcement of the Fugitive Slave Law of 1850. In "The Fugitive Slave Law: A Double Paradox," Gara indicated that the law brought about organized and militant resistance to it, such as countless protesting meeting and petitions to ask for the repeal of the law, the organization of special vigilance committees, and the enactment of a

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[15] Morris, *Free Men All,* x.

[16] James Oliver Horton and Lois E. Horton, "A Federal Assault: African Americans and the Impact of the Fugitive Slave Law of 1850," *Chicago-Kent Law Review* 68, no. 3 (1993): 1194.

new series of personal liberty laws. As a consequence, the Fugitive Slave Law became a dead letter before long.[17]

Even while admitting the influence of abolitionist movement on the personal liberty laws, Morris has tends to stress the moderate nature of personal liberty laws. In so doing, he necessarily minimizes the role of personal liberty laws in the development of abolitionist movements and intensification of antislavery politics. Morris has argued that personal liberty laws remained an essentially moderate approach to the slavery question even in the 1840s and 1850s. In Morris' analysis, personal liberty laws are described as a product of political compromise and conservatism rather than as a more radical abolitionist program and efficient strategy because he believes that the contents of personal liberty laws was considerably restricted by the Northern commitment to "ardent unionism," "imperatives and uncertainties of federalism," "a continued recognition of the lawful holding of persons as property," and sometimes "shortsighted appraisal of social reality." In addition, since Morris' primary interest lies in the legislative history of the personal liberty laws, he rarely attempts to assess the effectiveness of the laws.[18]

In depicting the personal liberty laws as unsuccessful, marginal, and conservative, historians have severed the close ties of personal liberty laws with radical abolitionism in its various forms. As a consequence, their meaning as an effective and significant strategy and agenda of the abolitionist movement has been downplayed. This is because historians have generally argued that during the 1840s political abolitionism – which generated personal liberty laws – proved to be a dead end and was superseded by the politics of Free Soil, which ultimately

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[17] Larry Gara, "The Fugitive Slave Law: A Double Paradox," *Civil War History* 10, no. 3 (September 1964): 229-40.

[18] Morris, *Free Men All*, 24.

generated the Republican Party. Around 1840, recognizing that the tactic of moral suasion had reached an impasse, political abolitionists tried to create independent antislavery party. The tenets of political abolitionism tended to be moderate or to avoid a radical tone because the political abolitionists were generally willing to use compromise and concession to build an antislavery platform broad enough to support candidates and win elections. Abandoned in the name of political expediency was the essential abolitionist principle of immediate abolition. By 1848 any commitment to human freedom and personal liberty for African Americans disappeared, and milder appeals for slavery restriction prevailed. As the transcontinental expansion in the 1840s revitalized the struggle over extension of slavery, most politically-minded abolitionists tended to marginalize fugitive slave questions by entirely aiming at slavery restriction. Rather than abolitionism, free-soilism came to dominate antislavery movements by the end of 1850. Indeed, antislavery politicians did not attempt to discuss and debate fugitive slave questions in Congress during the first five years of the appearance of the Republican Party.[19]

At the state level, however, the emergence of political abolitionism did not marginalize either egalitarian abolitionism or the fugitive slave issue. The persistent pursuit of radical personal liberty laws proved that the move into politics had not diluted the moral essence of the abolitionist movement. Still, militant abolitionism, fugitive slave question, and personal liberty laws were primary, unflagging subjects of the state abolitionist movement. This was especially true in the Ohio abolitionist movement. Rather than being overshadowed by a rise of the political antislavery dedicated to the restriction of slavery, Ohio abolitionists' commitment to the fugitive slave question and personal liberty laws became all the more intensified because of the

[19] Fehrenbacher, *The Slaveholding Republic*, 245.

passage of the state Fugitive Slave Law in 1839.[20] This law was the most comprehensive and repressive of the state fugitive slave laws in the North, providing for vigorous state action in the recapture and removal of fugitive slaves and the suppression of abolitionists. Although the law was passed at the request of the Kentucky legislature, it was essentially designed by Ohio's political anti-abolitionists to launch a preemptive strike against rapidly developing state-level abolition movement. Because of this "bill of abominations," Ohio's antislavery movement dedicated to the protection of fugitive slaves and the challenge to constitutionality of the federal fugitive slave legislation was more firmly established in the 1840s.

While Ohio abolitionists remained highly effective social and political agitators, holding the balance of power in local or state elections, political abolitionists of the Liberty Party held on to the principle of human brotherhood, equal rights, and opposition to the federal and state fugitive slave laws. Naturally, the Libertyites took a firm stand against the 1839 Fugitive Slave Law as anti-republican and as dangerous to the liberties of blacks, and, in a similar vein, severely criticized the *Prigg* decision that nullified the 1826 Pennsylvania personal liberty law. Enraged, they called on the state legislatures of the North to maintain their personal liberty laws.[21] Even in the middle of the rise of free-soil Republicanism, daring and radical voices persisted. As the presidential campaign of 1856 progressed, for example, James Mitchell Ashley of Toledo, radical Republican and strong abolitionist, expressed his dismay that the Fugitive Slave Law of 1850 was being obeyed in spite of the fact that the Constitution did not give Congress the power to enact law for the return of runaway slaves. On January 29, 1861, he proposed the first federal

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[20] An Act relating to Fugitives from labor or service from other States, 37 Laws of Ohio 38 (1839).

[21] *The Philanthropist*, September 27, 1843.

personal liberty law in the U.S. House of Representatives to counteract the federal Fugitive Slave Law.[22]

This study suggests that Ohio abolitionists' effort to adopt personal liberty laws revitalized and radicalized antislavery politics in Ohio, even as those politics faced stern challenges such as the federal and state fugitive slave laws. Ohio abolitionists persistently challenged and undermined the established constitutional and political systems by reviving the issues of fugitive slaves and personal liberty laws, which was the most sensitive and explosive in the antebellum period. Even when Garrisonians advocated disunion, Ohio's radical abolitionists advised them to push vigorously forward with the political campaign for the adoption of personal liberty laws rather than to strive for the extreme action of disunion. So, they recommended that "before they are ready for these extreme measures, as they esteem them, there is a direction in which they can employ their political energies if they see good… They can do for Liberty what the Slave States do for Slavery. They can nullify the laws of Congress providing for the recapture of Slaves, and punish as felons all men pursuing or claiming slaves, or assisting in the pursuit."[23] Also, one radical abolitionist continued to press for the adoption of personal liberty law when he asked Governor Salmon P. Chase to "hold it the first duty of every civil government and of every Chief Magistrate, to protect, at all hazards, every human being within the geographical limits of the Government, whether State or National, from the hell of the chattel enslavement."[24]

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[22] Robert F. Horowitz, "James M. Ashley and the Presidential Election of 1856," *Ohio History* 83, no. 1 (Winter 1974): 14-15.

[23] *Antislavery Bugle*, October 14, 1854.

[24] *Antislavery Bugle*, October 14, 1854, April 12, 1856.

Indeed, the antislavery campaign for the adoption of personal liberty laws helped create an ideal political battleground for the Ohio abolitionists who did not want to compromise the moral integrity of their abolitionist movement and at the same time aimed to pursue more practical political strategy and tactics for abolition of slavery. However, other questions remain unanswered. Even though the 1839 Fugitive Slave Law was repealed in 1843, it took fourteen more years for Ohio abolitionists and antislavery radicals to finally succeed in passing personal liberty laws in 1857. Ohio legislature's action for the adoption of personal liberty was slow and hesitant compared with other northern states' swift legislative move, even after the repeal of the state Fugitive Slave Law in 1843. Does this mean that Ohio abolitionists abandoned or marginalized the issue of fugitive slave and personal liberty laws? Or does this mean that Ohio's prosouthern anti-abolitionist circle was strong enough to defeat the antislavery efforts to adopt personal liberty laws? How can it be explained?

To conclude, the long absence of personal liberty laws until 1857 in Ohio proves nothing in regard to the persistence of antislavery movement for the adoption of personal liberty laws. In spite of the fact that Ohio's personal liberty laws did not pass in the legislature until 1857, antislavery campaign for the adoption of personal liberty laws dominated Ohio politics. Almost every Ohio legislature after 1843 confronted the strenuous efforts of abolitionists and antislavery radicals seeking the adoption of personal liberty laws. Even as other slavery issues grew in importance in the late 1850s, Ohio abolitionists persisted and finally succeeded in adopting their personal liberty laws. The issues of fugitive slaves and personal liberty laws gained their importance increasingly as personal liberty laws became defined as a political manifestation of the growing anti-Southern sentiment in Ohio against the aggression of the slavery interests.

Confronting the federal Fugitive Slave Law of 1850, Ohio abolitionists became more devoted to the "higher law" principle, with varying degree of force and violence. They continued to agitate for the adoption of personal liberty laws which would neutralize the 1850 Fugitive Slave Law and provide stronger legal protection for fugitive slaves. By 1856, the *Margaret Garner* case prompted state legislature to focus on the discussion on passing personal liberty laws. In addition, the Republican-dominated 52nd General Assembly created a friendly political atmosphere for the adoption of personal liberty laws. On February 1, 1856, the Senate Judiciary Committee began to examine whether the state could act to secure a jury trial for alleged fugitive slaves without infringing upon federal law or the Constitution. However, antislavery radicals offered more radical proposal. In addition to a bill to give more efficiency to the writ of *habeas corpus*, Oliver P. Brown, radical Republican of Portage County, presented a series of personal liberty bills. They were entitled, "To punish the ministerial officers of counties, townships, villages and cities, in the State of Ohio, for aiding in the capture of fugitives from slavery," "To punish citizens of Ohio for voluntarily engaging in slavecatching," and "To prevent the jails and prisons of Ohio from being used for the purpose of confining, detaining, or imprisoning so called fugitives from slavery," respectively. The opponents of the bills realized exactly what the antislavery radicals sought to acquire through the personal liberty legislation when they said that they could "smell abolitionism in it."[25]

The antislavery efforts to secure personal liberty laws came to fruition in the second session of the 52nd General Assembly of the following year. The Republican-dominated legislature finally adopted three personal liberty laws in 1857, which were "An Act to prohibit the confinement of fugitives from slavery in the jails of Ohio," "An Act to prevent slaveholding and kidnapping in Ohio," and "An Act to prevent kidnapping." These laws made kidnapping a

[25] *Anti-Slavery Bugle*, March 8, April 12, 1856.

felony punishable by imprisonment for up to nine months and $300 fine and also forbade federal marshals from using state facilities to hold runaway slaves. Furthermore, the last section of the second bill contravened the 1850 Fugitive Slave Law by limiting the operation of arrest to only federal marshal and by prohibiting state officers from participating in the arrest of the alleged fugitives.

The significance of the adoption of these personal liberty laws cannot be overemphasized. Together, they signified not only the fundamental transformation of state fugitive slave policy but also the wholesale defeat of anti-abolitionist political forces by a strongly antislavery majority. The adoption of personal liberty laws in Ohio dramatized the success of personal liberty politics. Longstanding absence of personal liberty laws in Ohio meant a stable prosouthern state fugitive policy. Indeed, Ohio, unlike the other northern states, had not passed even one personal liberty law until the 52nd General Assembly because of a hostile combination of the Democrats throughout the state and of the Whigs from southern parts of the state. Considering that Ohio abolitionist and antislavery radicals finally put down the obstinate anti-abolitionist resistance to the adoption campaign, the passage of personal liberty laws in 1857 symbolizes the success of the Ohio antislavery movement since the repeal of the Black Laws in 1843 and denotes fundamental transformation of state fugitive slave policy as revealed in the every clauses of the personal liberty laws hostile to the slaveholders and the system of slavery itself.

This study is not only about personal liberty laws per se; it is also about the development of abolitionism and antislavery politics in Ohio more broadly, as reflected in the struggles to repeal the state Fugitive Slave Law and adopt the personal liberty laws. Much of this work deals with the legislative debates and battles regarding the state and federal fugitive slave policy and

personal liberty laws. Some parts focus on the judicial decisions concerning fugitive slave and kidnapping. But this study also addresses the illegal aid or rescue operations of abolitionists, because they constituted an important part in the development of antislavery politics. However, the ultimate discussion would focus on the interactions between personal liberty laws and antislavery movement in the radicalization of antislavery politics in Ohio.

This study begins by tracing the emergence and decline of personal liberty politics before the passage of the state Fugitive Slave Law of 1839. It seeks to explain the longstanding absence of personal liberty laws in Ohio. It suggests that after the adoption of a series of Black Laws, which provided the basic fugitive slave policy favorable to claimants seeking the recovery of their property, Ohio gradually developed the politics of personal liberty intervening in the administration of slaveholders' recaption right to fugitive slaves. The adoption of a series of anti-kidnapping laws dovetailed with the evolution of the state fugitive slave policy towards the establishment of what I call "personal liberty politics." As a consequence, during the first three decades of the nineteenth century, a significantly pro-freedom fugitive slave policy prevailed in spite of the persistence of strong white supremacist policy.

When militant abolitionism emerged in the early 1830s, however, radical abolitionists inadvertently fostered unity among anti-abolitionists. Because the first intensive campaign of radical abolitionists was to question the constitutionality of the federal Fugitive Slave Law and adopt stronger personal liberty legislation, the counterattack of the anti-abolitionists on the abolitionists focused on establishing firmly proslavery fugitive slave policy. It is noteworthy that the first, successful task of the political anti-abolitionists was the passage of the repressive Fugitive Slave Law.

Therefore, the first chapter also suggests that anti-abolitionists became all the more hostile to the personal liberty legislation because they regarded it as the embodiment of abolitionism. The repression of personal liberty measures was established as an important way of checking abolitionists.

Chapter 2 focuses on the adoption of the 1839 Fugitive Slave Law as the embodiment of political anti-abolitionism. Study of this law has been strangely neglected, in spite of the fact that it provides a deep insight into the rise of political anti-abolitionists and the initiation of a more militant antislavery movement. The central theme of the chapter is that the adoption of the 1839 Fugitive Slave Law did not so much emerge at the dictation of a Kentucky legislature enraged by the Mahan affair of 1838 as it originated in an anti-abolitionist preemptive strike against Ohio's abolitionist movement. Most of all, the Fugitive Slave Law was just part of a series of anti-abolitionist measures in the legislature. In addition, while the Fugitive Slave Law, like the federal Fugitive Slave Law, guaranteed a secure and effective reclamation of runaway slaves, it added poisonous clauses that illegalized any actions of the abolitionists regarding runaway slaves.

The chapter suggests that, as a consequence of the adoption of the repressive Fugitive Slave Law, Ohio abolitionists became more militant, and Ohio's antislavery politics would continuously revolve around fugitive slave questions and slave-centered abolitionism in spite of the emergence of political abolitionism which gradually alienated fugitive slave question by giving priority to the restriction of slavery.

This chapter also reveals how Ohio abolitionists seriously reconsidered the need for independent political action. Ohio abolitionists became disillusioned by the Whigs who had aided the passage of the 1839 Fugitive Slave Law, not to mention the other anti-abolitionist

measures in the legislature. The Whigs, who tended to be more antislavery than Democrats, showed that they were as much hostile to abolitionists as the Democrats were. Therefore, Ohio abolitionists would be extremely cautious in supporting the Whigs and would in short order organize an independent political party.

Chapter 3 addresses Ohio abolitionists' resistance to the 1839 Fugitive Slave Law and the repeal movement, which succeeded in 1843. Paying special attention to the concerted efforts of political and moral abolitionists in the repeal movement, it suggests that political abolitionists and Garrisonians put aside their difference over some antislavery strategy and tactics and closed ranks behind the politics of personal liberty for the repeal of the 1839 Fugitive Slave Law. In so doing, the chapter argues that Ohio abolitionists' antislavery struggle to repeal the Fugitive Slave Law helped them maintain their radical tenets in regard to fugitive slave questions in the process of the politicization of abolitionism.

In other words, this chapter claims that the repeal movement laid the foundation for the radical political abolitionism dedicated to high-minded egalitarianism and the protection of personal liberty of fugitive slaves without compromise and accommodation. It also argues that the repeal movement provided a chance to persistently question the authenticity of the antislaveryism of the Whigs and help form the Liberty Party.

This chapter also shows how the state courts and antislavery lawyers contributed to the incapacitation of the state Fugitive Slave Law. While Ohio lawmakers maintained their silence in the face of the demand by abolitionists for the repeal of the 1839 Fugitive Slave Law, or responded with further anti-abolitionist measures, antislavery lawyers and state judges persistently impeded and undermined the operation of the state Fugitive Slave Law. By pursuing

much more progressive interpretations in fugitive slave cases, Ohio's state courts played a significant role in reinforcing personal liberty politics.

Chapter 4 deals with the antislavery struggles to adopt personal liberty laws between 1843 and their final adoption in 1857. The main purpose of the chapter is to refute the assumption that Ohio abolitionists' efforts to adopt personal liberty laws declined during the emergence of Free Soil and Republican Parties. To this end, the chapter suggests an answer to the question of how and why Ohio lagged behind other Northern states in adopting a personal liberty law.

It argues that anti-abolitionists' hostility to abolitionism successfully combined with their fear of the radicalism of personal liberty laws to frustrate the adoption and passage of personal liberty laws in Ohio until 1857. In spite of the antagonism, however, the persistence of the personal liberty politics (including challenges to the constitutionality of the federal Fugitive Slave Law), the dissolution of the Whigs, the growth of the Republican Party, and the assertion of the states' sovereignty against the Slave Power finally broke down the walls of anti-abolitionism and led to the passage of personal liberty laws in 1857. Therefore, this chapter ends with the conclusion that the belated adoption of the personal liberty laws in 1857 dramatized the radicalization of the antislavery politics, compelled by the indomitable Ohio abolitionists.

Chapter One

The Emergence and Decline of Personal Liberty Politics in Early Ohio

Ohio, the first fruit of the Northwest Ordinance of 1787, entered the Union in 1803. In accordance with the Article VI of the Ordinance, Ohio outlawed slavery. However, the Ordinance did not dissuade proslavery white inhabitants of the South from immigrating to Ohio. The existence of these proslavery elements was one reason for the institutionalization of racism in the Constitution and laws of Ohio even though Ohio was an antislavery state. In addition, the proximity of Ohio to slaveholding states gave rise to close social and commercial relations between them, forcing Ohio to adopt a conciliatory and even amicable policy toward the slave system. Throughout the early history of Ohio, southern Ohioans -- and particularly those in Cincinnati, the commercial metropolis of the state and the major trading center for Southerners -- were anxious to ally the state's economic and political interests with those of the South. Early in the nineteenth century Cincinnati became a manufacturing center to which the South looked for supplies of machinery, implements, furniture, and food. The social leaders and businessmen of that prospering city, therefore, tended to be unfavorable, or even hostile, to any antislavery actions taken by abolitionists and blacks.[1] These factors became the basis for later social and political disputes and conflicts with regard to the personal liberty and civil rights of African Americans, fugitive and free.

These political and economic considerations quickly generated a series of laws, commonly referred to as the Black Laws, in early Ohio, which substantially institutionalized racial discriminatory policy at every level of society from places of work to the state courts. The

[1] Carter G. Woodson, "The Negroes of Cincinnati Prior to the Civil War," *The Journal of Negro History* 1, no. 1 (January 1916): 4.

Black Laws served as formidable legal, political, and social apparatuses to discriminate and suppress African Americans until their repeal in 1849. Particularly, the "testimony clause," which forbade black testimony in court cases where a white was involved, shows at a glance the nature of the Black Laws. These Black Laws had two clear objectives. On the one hand, they had an obvious intention of preventing the settlement of blacks in Ohio as a safe haven from the oppression of slavery by putting intolerable press on them. On the other hand, the Black Laws were drafted to provide basic state procedures for the recapture and removal of fugitive slaves seeking refuge in Ohio. By banning further black settlement and by restricting the rights of black residents, ultimately, the state policy of Ohio regarding black people aimed for the establishment of white supremacist politics.

Although these prompt legislative actions failed to stem the influx of blacks into the state in the end, they succeeded in constructing the state based upon "the politics of repression."[2] To be sure, deep-rooted racial prejudice contributed to the justification of the Black Laws. Based on the arguments on the alleged physical and intellectual inferiority of the black people and their natural tendency of moral deterioration according to color lines, immigration restrictionists warned of the danger of inherent in any attempts to allow the further immigration of blacks and to integrate them into the political and social community. However, the existence of these discriminatory laws was instrumental in reinforcing racial prejudice and in justifying the political and social structures based on white supremacy.[3] In these hostile social and legal conditions,

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[2] Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago, IL: University of Chicago Press, 1961).

[3] On the formation of "race" discourse involving the meaning of skin color and the social relation around it, see Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: The University of North Carolina Press, 1968); Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New England, 1780-1860* (Ithaca: Cornell University Press, 1998); Reginald Horsman, *Race and Manifest Destiny: The Origins of*

African Americans' quest for equality time and again faced terrorism licensed by social and political elites. In 1829, especially, the anti-black sentiment against self-assertion within urban African American communities became obvious when a white mob in Cincinnati launched vicious attacks on their black neighbors, destroying the black community and driving out several hundred residents.[4] Colonization, an attempt of whites to resolve race relation by deporting blacks to Africa, gained strength.[5]

American Racial Anglo-Saxonism (Cambridge, Mass.: Harvard University Press, 1981); Barbara J. Fields, "Ideology and Race in American History," in *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward*, ed. J. Morton Kousser and James M. McPherson (New York: Oxford University Press, 1982), 143-77; David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (London; New York; Verso, 1991); Roediger, "The Pursuit of Whiteness: Property, Terror, and Expansion, 1790-1860," *Journal of the Early Republic* 19, no. 4 (Winter 1999); 579-600; Alexander Saxton, *The Rise and Fall of the White Republic: Class Politics and Mass Culture in Nineteenth-Century America* (London; New York; Verso, 1990); James Brewer Stewart, "Modernizing 'Difference': The Political Meanings of Color in the Free States, 1776-1840," *Journal of the Early Republic* 19, no. 4 (Winter 1999): 691-712. On the developments of free black communities and white supremacist social practices, see James Oliver Horton and Lois E. Horton, *In Hope of Liberty: Culture, Community, and Protest Among Northern Free Blacks, 1700-1860* (New York: Oxford University Press, 1997); Gary B. Nash, *Forging Freedom: The Formation of Philadelphia's Black Community, 1720-1840* (Cambridge, Mass.: Harvard University Press, 1988); Nash, *Race and Revolution* (Madison, Wisconsin: Madison House Publisher, 1990); Leonard P. Curry, *The Free Blacks in Urban America, 1800-1850: The Shadow of the Dream* (Chicago: University of Chicago Press, 1981); Julie Winch, *Philadelphia's Black Elite: Activism, Accommodation, and the Struggle for Autonomy, 1787-1848* (Philadelphia: Temple University Press, 1988).

[4] On the fullest overview of the developments of mob riots in the northern cities, see Litwack, *North of Slavery*; Richard C. Wade, "The Negro in Cincinnati, 1800-1830," *Journal of Negro History* 39, no. 1 (January 1954): 43-57; John M. Werner, "Race Riots in Jacksonian America, 1824-1849" (Ph.D. diss., University of Indiana, 1973).

[5] Paul Goodman, *Of One Blood: Abolitionism and the Origins of Racial Equality* (Berkeley: University of California Press, 1998), 1-35; George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914* (New York: Harper & Row, 1971), 1-42; P.J. Staudenraus, *The African Colonization Movement, 1816-1865* (New York: Columbia University, 1961); Hugh Davis, "Northern Colonizationists and Free Blacks, 1823-1837: A Case Study of Leonard Bacon," *Journal of the Early Republic* 17, no. 4 (Winter 1997): 651-75.

However, Ohio's position regarding fugitive slaves in the first three decades of the nineteenth century was somewhat different from the general social and political policy based upon the politics of white supremacy. Considering the establishment of white supremacist politics and also given the general tendency of other northern states to accept slaveholders' common law right of recaption,[6] it is not difficult to assume that Ohio's fugitive slave policy might not be far off the guidelines of the fugitive slave clause of the Constitution and the federal Fugitive Slave Law of 1793. After the adoption of the Black Laws of 1804 and 1807, which provided the basic fugitive slave policy favorable to claimants seeking the recovery of their property, Ohio gradually developed the politics of personal liberty intervening the administration of slaveholders' right to fugitive slaves.

This change was manifested in the adoption of a series of anti-kidnapping laws. The direction of a series of anti-kidnapping legislation of Ohio definitely dovetailed with the evolution of the state fugitive slave policy towards the establishment of personal liberty politics. In spite of Ohioans' antipathy to black immigration and the continuance of legal white supremacy based upon the discriminatory Black Laws in the first three decades of the nineteenth century, Ohio established mild but meaningful personal liberty politics based on the anti-kidnapping laws, pro-black judicial decisions, and the collective resistance of antislavery advocates, which together offered blacks some safeguards and protections. Especially after the eruption of the Missouri crisis, Ohioans' hostility to the federal Fugitive Slave Law became more and more profound and compelled the state legislature to maintain its fugitive slave policy in favor of the personal liberty of blacks. In the mid-1830s, the emergence of militant abolitionism dedicated to the immediate abolition of slavery transformed the nature and direction of legal and

[6] Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (Baltimore: The Johns Hopkins University Press, 1974), 29.

political debates over the personal liberty of fugitive slaves, bent on the adoption of stronger protective measures for the personal liberty of blacks, or the passage of a radical personal liberty law itself. However, general prospects were gloomier in Ohio eight years after the beginning of the immediast abolition movement due to the emergence of full-scale political anti-abolitionism. The state of Ohio began to retrogress on the subject of fugitive slaves, as indicated by the reports of the 35th and 36th General Assemblies and as culminated in the enactment of the state Fugitive Slave Law in 1839.

Ohioans' anti-black sentiment and the political and economic considerations did not lead to the adoption of proslavery fugitive slave policy. When immediate abolitionists organized during the early 1830s, they inadvertently sparked a backlash which led to a restoration of the proslavery fugitive slave policy. Organized political anti-abolitionists completed their first task with the adoption of the state Fugitive Slave Law of 1839. It is noteworthy that the first task of anti-abolitionists was the passage of the repressive Fugitive Slave Law. It is apparent that they realized with the organization of militant abolitionism that they had been too negligent in supervising the development of the politics of personal liberty to make strained relations with the neighboring slaveholding states. In this respect, the rapid change of the fugitive slave policy of Ohio in the mid-1830s was as much due to the anti-abolitionists' fear of personal liberty politics which had been persistently developed for the last thirty years as to their hostility to the militant abolitionism. This chapter seeks to trace the development of the first personal liberty politics in Ohio and the abrupt decline of it following the emergence of political anti-abolitionism in the 1830.

Political Structures with a Pronounced Regional Dimension

The old National Road (along 40th parallel) was commonly regarded as a Mason and Dixon line across Ohio, as far as public attitudes toward slavery and abolition were concerned.[7] As the Cincinnati *Philanthropist* showed, antislavery was stronger among the Whigs in northern Ohio than in the southern part of the state, where conservatism and conformity to the prejudices of slaveholders were more common.[8] The existence of distinctive antislavery sentiment in the northern section of the state mostly emanated from the fact that the pioneer settlers brought their New England culture with them. Settlers from all over New England, New York, and northern Pennsylvania came to the Connecticut Western Reserve of northern Ohio. Even though there was not without racist culture utterly, residents of the Western Reserve could maintain and develop their own distinctive antislavery political culture and cultivate a positive attitude towards antislavery activity and civil rights reform because they were "enterprising and churchgoing folk who believed in America's providential destiny." Slavery was contradictory to "their cherished notions of mobility and self-determination." Especially, the antislavery attitude of the Western Reserve was stronger by a series of religious revival in the 1820s and 1830s. These evangelical revivalists dedicated themselves to reform social evils including slavery, growing their radical religious vision. The religiously oriented abolitionism led the early Western Reserve antislavery protests before the emergence of political abolitionism in the 1840s. Based on this radicalism, therefore, from an early day they questioned the federal Fugitive Slave Law and their attitude

[7] An abolitionist press elaborated on the parallel: As far as slavery and abolition were concerned, it wrote, "Brown County is South Carolina, Hamilton is Louisiana, and Warren, Mississippi. Columbiana, Trumbull, Ashtabula, and Cuyahoga, are Pennsylvania, Massachusetts, Vermont, and Connecticut, respectively, and the National road is Mason and Dixon's line." Salem *Anti-Slavery Bugle*, January 31, 1846; Emmett D. Preston, "The Fugitive Slave Act in Ohio," *The Journal of Negro History* 28, no. 4 (October 1943), 422.

[8] *Cincinnati Weekly Herald and Philanthropist*, July 8, 1846.

toward the rendition of fugitive slaves gained for them some degree of notoriety. Consequently, the region of the Western Reserve became a cradle of Ohio antislavery, laying the foundation for the production of such outstanding radical antislavery politicians as Joshua R. Giddings, Benjamin F. Wade, and Edward Wade.[9]

In sharp contrast to the Western Reserve, in the early nineteenth century southern Ohio was dominated by settlers from states in which slavery still existed – New Jersey, Maryland, Delaware, Kentucky, Virginia, North Carolina, and Tennessee.[10] Therefore, Ohio whites of this region shared a comprehensive racist culture and formed proslavery fugitive slave policy. In addition, since southern Ohio, as an entry point for migrating free blacks and fugitive slaves, had a large black population, everyday interaction between free blacks and whites engendered a permanent state of tension in many arenas of society and politics. Most memorials against blacks were sent to the legislature from the southern counties, and most antebellum rioting against blacks took place there. Standing against the antislavery representatives from the

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[9] William C. Cochran, *The Western Reserve and the Fugitive Slave Law: A Prelude to the Civil War* (Cleveland: Western Reserve Historical Society, 1920; reprinted, 1972), 54; Preston, "The Fugitive Slave Act in Ohio," 423; Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio* (Athens: Ohio University Press, 2005), 118; William W. Williams, *History of Ashtabula County, Ohio: With Illustrations and Biographical Sketches of Its Pioneers and Most Prominent Men* (Philadelphia: Williams Brothers, 1878), 33; Albert Gallatin Riddle, "Rise of Antislavery Sentiment in the Western Reserve," *Magazine of Western History* VI (May 1887): 145; Chris Padgett, "Comeouterism and Antislavery Violence in Ohio's Western Reserve," in *Antislavery Violence: Sectional, Racial, and Cultural Conflict in Antebellum America*, ed. John R. McKivigan and Stanley Harrold (Knoxville: The University of Tennessee Press, 1999), 195-96.

[10] To the east-central portion comprising the counties of Columbiana, Stark, Wayne, Jefferson, Belmont, Carroll, and Tuscarawas came settlers from middle and western Pennsylvania including Moravians and "Pennsylvania Dutch" as well as North Carolinians and Virginians opposed to slavery. Massachusetts settlers landed up in Marietta and the Muskingum Valley. Cochran, *The Western Reserve and the Fugitive Slave Law*, 54; Brown, Jeffrey P. and Andrew R.L. Cayton, *The Pursuit of Public Power: Political Culture in Ohio, 1787-1861* (Kent, Ohio: The Kent State University Press, 1994), ix.

Western Reserve and Ohio antislavery advocates, southern Ohio representatives made concerted efforts to implement prosouthern and anti-black political programs.[11]

In spite of the growing sense of sectional distinctiveness, however, racial attitudes and practices in southern and central Ohio were not always uniform. In the easterly counties and in some southwestern ones, some Ohioans held more forbearing racial views. Together, renegade Southerners, Quakers, and blacks did not hesitate to express their antislavery views and develop active antislavery movement. They also served as conductors on Ohio's Underground Railroad, aiding fugitive slaves in their escape to freedom. Even in Cincinnati, there was a pronounced antislavery sentiment as a result of the vigorous and undaunted agitations of antislavery activists such as Levi Coffin, James G. Birney, Gamaliel Bailey, and Salmon P. Chase.[12]

In southeast Ohio, in addition, the antislavery sentiments took deep root. In Jefferson County, the abolitionist sentiment of the Quakers produced the Union Humane Society, Ohio's first Anti-Slavery Society, in 1815 at St. Clairsville. Organized by Charles Osborn and Benjamin Lundy, the Society openly denounced slavery, advocated gradual emancipation, and also opposed colonization schemes, out of religious persuasion. Here it was that Osborn published his antislavery paper, *The Philanthropist*, on August 29, 1817, which discussed gradual emancipation. In June, 1821, Lundy began his own antislavery newspaper, the *Genius of Universal Emancipation*, which disseminated ideas about slavery and abolition among

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[11] Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 118; David A. Gerber, *Black Ohio and the Color Line, 1860-1915* (Urbana: University of Illinois Press, 1976), 11.

[12] Gerber, *Black Ohio and the Color Line*, 11; Francis P. Weisenburger, *The Passing of the Frontier, 1825-1850*, vol. 3 of *The History of the State of Ohio*, 6 vols. ed. Carl Wittke (Columbus, Ohio: Ohio State Archaeological and Historical Society, 1941), 363-86; Preston, "The Fugitive Slave Act in Ohio," 423; Albert Bushnell Hart, *Slavery and Abolition, 1831-1841* (New York: Harper & Brothers, 1906), 195.

sympathetic whites and free blacks through the formative years of the abolition movement.[13] In Marietta, Washington County, the *Western Spectator* boosted abolitionist sentiment by running a long series of bitterly antislavery articles during 1811 to 1812. On October 17, 1836, the Washington County Anti-Slavery Society suggested a ground-breaking resolution which asked for the appointment of a committee to "draft a memorial to Congress for the grant of a tract of land for the free people of Color." This was important and unique in that the Anti-Slavery Society devised an economic policy for free blacks.[14]

The Black Laws - The Foundation of the Politics of White Supremacy

The state constitution of 1803 made Ohio officially an antislavery state, but its constitution and laws institutionalized racism. Indeed, in official terms Ohio became one of the most racist states in the North. Suffrage was from the outset restricted to white males, and blacks' rights were soon further reduced by two legislative enactments.

Among the earliest of these oppressive laws was the Black Law of 1804 which was designed primarily to restrict future black settlement in Ohio.[15] As early as its first full session,

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[13] Merton L. Dillon, *Benjamin Lundy and the Struggle for Negro Freedom* (Urbana: University of Illinois Press, 1966), 34-54; Alice Dana Adams, *The Neglected Period of Anti-Slavery in America, 1808-1831* (Williamstown, Mass.: Corner House Publishers, 1973), 58-62.

[14] Donald J. Ratcliffe, *Party Spirit in a Frontier Republic: Democratic Politics in Ohio, 1793-1821* (Columbus: Ohio State University Press, 1998), 231; Marietta *Western Spectator*, March 5, 1811 through February 8, 1812; *Marietta Gazette*, November 11, 1836; Ruth Ann Ketring, *Charles Osborn in the Anti-Slavery Movement*, No. 7 of Ohio Historical Collections (Columbus: Ohio State Archaeological and Historical Society, 1937), 34-40; Merton L. Dillon, *Benjamin Lundy and the Struggle for Negro Freedom* (Urbana: University of Illinois Press, 1966), 7-36; Randall M. Miller, "The Union Humane Society: A Quaker-Gradualist Antislavery Society in Early Ohio," *Quaker History* 61, no. 2 (Autumn 1972): 91-106

[15] An act to regulate black and mulatto persons, 2 Laws of Ohio 63 (1804); Stephen Middleton, *The Blacks Laws in the Old Northwest: A Documentary History* (Westport, Connecticut: Greenwood Press, 1993), 15-8.

legislative attention focused on the increasing immigration of blacks into the State. On December 15, 1803, the state legislature organized a special committee to consider the bill introduced by Representative Philemon Beecher of Fairfield County, which would restrict black migration to Ohio. The House committee handled the bill quickly and presented its final draft to the Senate, where it passed after minor amendments on December 31. The legislature finally approved the bill on January 3, 1804 under the title of "An act to regulate black and mulatto persons."[16] The Black Law of 1804 forbade the settlement of black people in Ohio unless they could present a certificate of freedom to be filed with the clerk in their county of residence. Anyone who employed blacks without evidence of free status was liable to a heavy fine of from ten to fifty dollars. As an inducement to prevent violations of this law, informers were to receive one half of the fine. If the unregistered black was a fugitive slave, the employer was subject to a fine of fifty cents for every day they had employed that person.[17]

Especially, the 1804 Black Law formalized the state procedures for the recapture and removal of fugitive slaves for the first time in Ohio. In response to complaints from Kentucky and Virginia slaveholders that their slaves were escaping into Ohio,[18] the fugitive slave clause of the 1804 Black Law faithfully supported Article IV of the federal Constitution and the federal

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[16] *Journal of the House of Representatives of the State of Ohio: The First General Assembly*, December 14, 22, 31, 1803; *The Philanthropist*, November 25, 1836, May 26, 1841.

[17] An act to regulate black and mulatto persons, 2 Laws of Ohio 63 (1804); Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 49-50; Paul Finkelman, "Race, Slavery, and Law in Antebellum Ohio," in *The History of Ohio Law*, 2 vols., ed. Michael Les Benedict and John F. Winkler (Athens: Ohio University Press, 2004), 2: 755; Preston, "The Fugitive Slave Act in Ohio," 425; Cochran, *The Western Reserve and the Fugitive Slave Law*, 55-56.

[18] Charles Thomas Hickok, "The Negro in Ohio, 1802-1870," (PhD diss., Western Reserve University, 1896), 40.

Fugitive Slave Law of 1793.[19] Section IV of the 1804 Black Law provided that anyone convicted of knowingly harboring fugitive slaves or interfering with a lawful owner recapturing them could be fined from ten to fifty dollars. In addition, section VI provided the claimants with a simple means of recaption. Masters and their agents needed little documentation to prove a claim. On satisfactory proof that any black or mulatto person was a runaway, state judges or local justices of the peace could issue a warrant for their seizure. Most troublesome for Ohio's antislavery advocates was that section VI required a state law enforcement officer to arrest and deliver an alleged fugitive slave to the claimant.[20] By this law, Ohio made its state sheriffs and constables virtual "slavecatchers" who worked for "such compensation as they are entitled to receive in other cases for similar services."[21]

As the fear of increased black immigration continued to trouble those who considered the menace of black immigration to be serious, the 1804 Black Law was found to be inadequate. In 1807, therefore, the state legislature enacted another measure which made it difficult for blacks to become legal residents of Ohio. In addition to a "freedom-certificate" requirement of the1804 Black Law, the Black Law of 1807 provided that no blacks should be permitted to settle in Ohio unless they could, within twenty days, "enter into bond with two or more freehold sureties, in the penal sum of five hundred dollars" to guarantee their good behavior and support. The penalty

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[19] "No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due." Article IV, Section 2 of the United States Constitution.

[20] An act to regulate black and mulatto persons, 2 Laws of Ohio 63 (1804).

[21] *The Philanthropist*, November 25, 1836.

for employing unregistered blacks was raised from fifty to one hundred dollars.[22] As historian Paul Finkelman maintains, however, the bond provision did not require the actual posting of any money and there is little evidence of vigorous enforcement of the hiring provision.[23] Given the impressive growth of the black population resulting from consistent immigration, it seems clear that the law failed to achieve its original purpose of deterring black settlement in Ohio, in the end.[24] However, it remained a threat and an insult to blacks.

More important, the 1807 Black Law reinforced the provision concerning fugitive slaves, increasing the fine for harboring fugitives or interfering with recapture from fifty to one hundred dollars, one-half to go the informer. To make matters worse, this law stipulated the prohibition of black testimony in all cases involving white parties.[25] Section IV declared that "no black or

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[22] An act to amend the last named act, "An act to regulate black and mulatto persons," 5 Laws of Ohio 53 (1807); Middleton, *The Blacks Laws in the Old Northwest*, 17-18; *The Philanthropist*, November 25, 1836; Cochran, *The Western Reserve and the Fugitive Slave Law*, 56-57.

[23] Finkelman, "Race, Slavery, and Law in Antebellum Ohio," 757-59.

[24] According to Finkelman, the rapid growth of the black population was clearly due to immigration to Ohio. In 1800 Ohio had a black population of 337; by 1810 it reached 1,889, despite the Black Laws designed to deter black immigration. In the next decade, the black population had grown by more than two times, to 4,723. It doubled again in the next decade, reaching 9,568 by 1830. By 1840 the black population was 17,342 and in 1850 it reached 25,279, giving Ohio the third-largest black population in the North. Finkelman, "Race, Slavery, and Law in Antebellum Ohio," 758-59. For more detailed information about the growth of the black population in Ohio, see U.S. Census Bureau, *Negro Population, 1790-1915* (Washington, D.C.: Government Printing Office, 1915), 57.

[25] Following the lead of slaveholding states, the State of Ohio was the first of the Northern States to declare that blacks should not be allowed to give evidence in any cause, or matter of controversy, in court when either party to the same was a white person. Illinois and Indiana followed suit in February 1827 and December 1865 respectively. The 1827 law of Illinois provided that "no negro or mulatto shall be a witness in any court against a white person." And the 1865 law of Indiana stipulated that no negro should bear witness against a white man if he had entered, or should afterward enter, the State contrary to the thirteenth article of the State Constitution, forbidding their immigration. Frank U. Quillin, *The Color Line in Ohio: A History of Race Prejudice in a Typical Northern State* (Ann Arbor, Michigan: George Wahr, 1913; reprinted, 1969), 22.

mulatto person" would "be permitted to be sworn or give evidence in any court…in any cause depending, or matter of controversy, where either party to the same is a white person."[26] According to this section, every heinous crime – even rape, robbery, and murder – "were privileged [not convicted], when committed in the presence, or with the knowledge, of blacks only." Because of the viciousness of this section, one antislavery newspaper considered the previous sections a mere "whip" compared to this "scorpion." Indeed, it seemed that the state legislature considered it more important to ensure the degradation of black people than to arrest and prosecute criminals.[27] Besides, this testimony law completely deprived blacks of a core legal apparatus for their protection from either criminal assaults or civil harms. In particular, this testimony law would establish the foundation for numerous illegal kidnappings of fugitive slaves and free blacks, in most cases of which the state authority failed to prosecute the kidnappers and their accomplices because the only witness was a black. For this reason, the testimony law would become one of the major targets of Ohio abolitionists.

Together with these laws of 1804 and 1807, other Black Laws presented additional obstacles to blacks. The law of 1803, organizing the militia of the state, made blacks ineligible for service in the state militia as required by the federal militia act of 1792,[28] and the 1831 law,

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[26] An act to amend the last named act, "An act to regulate black and mulatto persons," 5 Laws of Ohio 53 (1807).

[27] *The Philanthropist*, November 25, 1836.

[28] The first portion of the Militia Act of 1792 was passed May 2, 1792 to give the President authority to call out the militia and the second portion of the Militia Act of 1792, providing federal standards for the organization of the Militia, was passed May 8, 1792. The second portion clarified the qualification of the militia, provided that "each and every free able-bodied white male citizen of the respective States, resident therein, who is or shall be of age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia, by the Captain or Commanding Officer of the company, within whose bounds such citizen shall reside, and that within twelve months after the passing of this Act." Militia Act of 1792, May 8, 1792, Article I.

entitled "An Act Relating to Juries," excluded blacks from juries by requiring jurors to have the "qualifications of electors." In addition, the law of 1838 prohibited the education of colored children at the expense of the state. All of these laws constituted what were collectively known as the "Black Laws," which would form the basis for the evolution of the politics of white supremacy in Ohio.[29] As later Ohio abolitionists understood exactly, those Black Laws were not made to "keep out" black immigrants, so much as to "keep down and injure" the black people already in the state.[30]

The Original Intent of the Black Laws in Early Ohio

On the surface, while the primary purpose of the Black Laws was to complete the construction of legal second-class status of African American immigrants following the restriction of franchise in the 1802 state constitution, they were originally intended to avoid political conflicts with the neighboring slaveholding states with respect to fugitive slave issue. In the long term, the Black Laws, to be sure, had an effect to establish the social and political structure based on the principle of white supremacy. But, at least in the short term, the direct effect of the Black Laws placated a Southern opinion, forming an amicable relation with the slaveholding states such as Kentucky and Virginia. The sense of urgency about the adoption of the Black Laws in the state legislature developed partly from Ohio's geographical position between two slaveholding states and Canada. Bordering the slaveholding states of Kentucky and Virginia, it was inevitable that Ohio attracted fugitive slaves as well as free blacks. Fugitive

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[29] Gerber, *Black Ohio and the Color Line, 1860-1915*, 4-5; Qullin, *The Color Line in Ohio*, 22-24; Woodson, "The Negroes of Cincinnati Prior to the Civil War," 3; Hickok, "The Negro in Ohio," 45-46.

[30] *Cincinnati Weekly Herald and Philanthropist*, July 22, 1846.

slaves sought refuge in Ohio, and many manumitted blacks tried to find a new settlement on its free soil. Although Ohio did not welcome black settlers, they were not welcome to remain in the South either. They were driven out of their home states by the slaveholders' hostile attitude, common in slaveholding states, which was that free blacks were potential risk factors of social unrest, and they were drawn to Ohio by the cheap frontier land. In addition, Ohio's appeal as a western state with affordable land was sufficient enough to attract many white immigrants with southern backgrounds. Even though the white immigrants might hate the system of slavery in their home states, they still retained a racist attitude towards blacks and favored imposing racist proscriptions on them.[31]

The state legislature's rapid enactment of Black Laws followed in large measure from Ohio's commercial relations with the slaveholding states. Ohio legislators, political leaders, and businessmen were deeply concerned that acquiring the reputation as a safe haven for fugitive slaves would jeopardize the state's economic connections with the southern states. Therefore, they urged the state legislature to devise proper fugitive slave legislation to placate southern slaveholders of Kentucky and Virginia who had complained that their slaves were escaping into Ohio or were being aided by Ohioans in making their escape into Canada. Since these commercial interests regarded fugitive slaves and later abolitionists as twin evils injuring relations with the southern states, they constantly sought to thwart all abolitionists' efforts to harbor or aid runaway slaves and disseminate propaganda against slavery.[32]

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[31] Gerber, *Black Ohio and the Color Line*, x, 3, 9-11; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 47; Ellen Eslinger, "The Evolution of Racial Politics in Early Ohio," in *The Center of A Great Empire: The Ohio County in the Early American Republic*, ed. Andrew R. L. Cayton and Stuart D. Hobbs (Athens: Ohio University Press, 2005), 82.

[32] Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 47; Hickok, "The Negro in Ohio," 40.

The demand of the slaveholders and the fear of the loss of the southern trade combined the rise of Abolition Societies to trigger the worst white rioting in Cincinnati, in summer of 1892. Obviously, the growing black population signified the inefficiency of the Black Laws, and it, in turn, meant a constant influx of fugitive slaves as well as free blacks. Indeed, a large number of black Cincinnatians were fugitive slaves without freedom papers. In addition, the formation of the black communities seemed to symbolize independence and upward mobility to whites. In particular, whites of the lower class regarded them as real threats to social and economic security. In an effort to listen to the cries of the slaveholders for the return of the fugitive slaves and to grant the request of white immigrants for the exclusion of blacks from that section, the city government in Cincinnati determined to enforce the Black Law that required blacks to post $500 bond for their good behavior. After the decision of the Supreme Court that the 1807 Black Law was constitutional, black people asked for ninety days to comply with the law and were given sixty. When the time was expired and many blacks failed to do their legal duty, mobs of angry whites assailed Cincinnati's black west end. They held sway in the city for five days without any police intervention. Some blacks fought back, shooting into the white mob. After the end of the riot, more than one thousand black Cincinnatians left for Canada.[33]

Increasingly, the commercial interests came to expand its social and political oppression of blacks and abolitionists. Their political pressure strained the freedom of speech to the point of collapse, resulting in the mob attack on James Birney's newspaper *The Philanthropist* in Cincinnati, on July 12, 1836. The commercial interests of Cincinnati had been disturbed by the

[33] Woodson, "The Negroes of Cincinnati Prior to the Civil War," 6-7; Donald R. Wright, *African Americans in the Early Republic, 1789-1831* (Wheeling, Illinois: Harlan Davidson, 1993), 135-36; Eslinger, "The Evolution of Racial Politics in Early Ohio," 94; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 70-71; John M. Werner, "Queen City of Mobs," ch. 3 of *Reaping the Bloody Harvest: Race Riots in the United States During the Age of Jackson, 1824-1849* (New York: Garland, 1986).

arrival of Birney from Kentucky, who attempted to publish his antislavery newspaper, because it might offend the customers in the neighboring slaveholding states. At a public meeting on January 22, 1836, the businessmen of Cincinnati determined to suppress antislavery agitation. A committee of twelve, composed of prominent Whigs and Democrats, tried to dissuade Birney from publishing an antislavery newspaper. But he refused their request and fought for the freedom of the press. In the end, on July 12, a mob marched to Birney's office and destructed the press.[34]

Alarmed by the ferocious attack upon the freedom of speech, the Clinton County Anti-Slavery Society, at its meeting in Wilmington, on October 5, 1836, adopted resolutions condemning the commercial interests. Resolving to support "the re-establishment of the Philanthropist," the Clinton County abolitionists declined "the guardianship of the commercial aristocracy of Cincinnati, who have arrogantly assumed the censorship of the press, and presume to dictate to the free citizens of Ohio, what shall be written, and printed, and read." In the next resolution, they illuminated that the original intention of the commercial interests lay in catering to the southern slaveholders, by declaring that "as by this outrage they have deliberately sold themselves and the Constitution of our country as the price of a rail-road to Charleston, and to purchase the trade of the South, they have proved their base servility to their southern dictators, brought disgrace on our State and lasting infamy on our commercial metropolis."[35] Indeed, the

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[34] On this mob attack, see William Birney, *James G. Birney and His Times: The Genesis of the Republican Party, with Some Account of Abolition Movements in the South before 1828* (New York: D. Appleton and Company, 1890), 204-19; Betty L. Fladeland, "James G. Birney's Anti-Slavery Activities in Cincinnati, 1835-1837," *Bulletin of the Historical and Philosophical Society of Ohio* 9, no. 4 (October 1951): 257-65; Weisenburger, *The Passing of the Frontier*, 374-75; Leonard L. Richards, *"Gentlemen of Property and Standing": Anti-abolition Mobs in Jacksonian America* (New York: Oxford University Press, 1970), 92-100.

[35] *The Philanthropist*, November 25, 1836. The antislavery agitation that James Birney and his *Philanthropist* made in Cincinnati had been especially repugnant to Cincinnatians in the mid-

handbill stuck up on the street corner with the warning "Abolitionists Beware" after the anti-abolition riot represented not the low sentiments of a wayward mob but the refined opinions of the merchant class. "The citizens of Cincinnati," it began, "embracing every class, interested in the prosperity of the City, satisfied that the business of the place is receiving a vital stab from the wicked and misguided operations of the abolitionists, are resolved to arrest their course." Then it warned those engaged in "the unholy cause of annoying our southern neighbors" as follows: "If an attempt is made to re-establish their press, it will be viewed as an act of defiance to an already outraged community…The plan is matured to eradicate an evil which every citizen feels is undermining his business and property."[36] In short, the commercial interests exhibited their determination to take more drastic measure against the abolitionist propaganda campaign.

The title of the Black Laws of 1804 and 1807, which was "An Act to regulate black and mulatto persons" and "An Act amend the last named act," belied the core intention of the legislations. To be sure, the inclusion of the fugitive slave clause in the Black Laws and the trend of amendment in the 1807 Black Law explicitly demonstrated the urgency and imperative of their adoption. Although the last section of the 1804 Black Law dealt directly with kidnapping and the need to protect free black people and, for this reason, one historian pointed out the ambivalence of Ohio policy regarding fugitive slaves, it is hard to say that it diluted the clear intention of the legislation aiming for the repression of fugitive slaves. The last section of the 1804 Black Law provided a thousand dollar fine for anyone removing or attempting to remove, a black person from the state without first obtaining certificate of removal from a judge

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1830s because they redoubled their strenuous efforts to secure the development of a Charleston and Cincinnati railroad for further trade with the South. Weisenburger, *The Passing of the Frontier*, 375; Cleveland *Daily Herald*, August 6, 1836.

[36] Richards, "*Gentlemen of Property and Standing*," 96; Fladeland, "James G. Birney's Anti-Slavery Activities in Cincinnati," 259.

or justice of peace, which was adduced as an evidence for this ambivalent or conflicting nature of the Black Laws around the fugitive slave issue. The other historian asserts that Ohio lawmakers "apparently hoped" that the 1804 Black Law "would prevent free blacks from coming into the state."[37] As they claim, this clause provided clearly some protections for free blacks. In addition, there is an element of true in the assessment that Ohio did not have clear prosouthern fugitive slave policy at this time. As well as the huge fine of a thousand dollar, the fact that half of the money was to go to an informer must have been a huge incentive for Ohioans to protect personal liberty of black neighbors. But, first of all, the anti-kidnapping clause was clearly drafted to protect only free blacks, not to obstruct slaveholder in the operation of recapturing fugitive slaves. Second, the anti-kidnapping clause was even neutralized in the 1807 Black Laws and, as a result, even the slight possibility of using the anti-kidnapping clause as a protective measure for fugitive slaves totally disappeared.

Undoubtedly, the anti-kidnapping clause was not even a consolation for Ohio's blacks, considering the essentially oppressive nature of the Black Laws. As historian Frank U. Quillin demonstrates, the law requiring blacks to give bond and certificate of freedom before they could settle in the state was probably the least strictly enforced of any of the Black Laws. But, it was not a dead letter by any means. In addition, the school law excluding blacks from the white school was virtually complete. The testimony law which forbade blacks to bear witness in court case against whites was carried out to the letter.[38] Besides, the fugitive slave clauses were the most rigorously enforced of any of the Black Laws and would establish a clear precedent for the comprehensive Fugitive Slave Law of 1839. Indeed, David Grier explained his move to Canada,

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[37] Finkelman, "Race, Slavery, and Law in Antebellum Ohio," 754-56; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio,* 49.

[38] Qullin, *The Color Line in Ohio,* 31-34.

stating that "In Kentucky I was set free by will…From Ohio, I came here [Canada] on account of the oppressive laws demanding security for good behavior – I was a stranger ad could not give it." Likewise, Eli Artis revealed his bitter experience, saying that "I suffered from mean, oppressive laws in my native State, Ohio." It was evident that the original intent of the Black Laws was to maintain white supremacy and remedy a grievance of the South about runaway slaves. Accordingly, it goes too far to say that white Ohioans were conflicted and ambivalent because of this anti-kidnapping clause.[39]

Furthermore, it seems more reasonable to understand the insertion of the anti-kidnapping clause in terms of the minimum measure for the preservation of states' rights rather than to interpret it as a manifestation of human respect for the personal liberty of African Americans. Basically, the virulent racism of Ohio whites was inescapable. The state legislatures reflected all demands of whites for the repression of blacks in the making of the Black Laws. However, although Ohio whites were willing to give up fugitive slaves to slavecatchers anytime, indiscriminate and illegal abduction of blacks by slavecatchers would seriously undermine the sovereignty of Ohio and cause a backlash from those who might feel violated by the aggression of the slavecatchers. Therefore, the least Ohio could do without stimulating the slaveholders in the South was to show a little effort to constrain illegal abduction of free blacks or fugitive slaves in Ohio by inserting a kidnapping clause into the Black Laws. However, the anti-kidnapping clause was even eliminated just three years after its creation in the course of reinforcing the anti-black legislation. Even though it is unclear about the real purpose of the anti-kidnapping clause, it was probable that the neutralization of the anti-kidnapping clause supported the possibility of its undesirability in the early state fugitive policy.

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[39] Benjamin Drew, *A North-Side View of Slavery: The Refugee or The Narratives of Fugitive Slaves in Canada* (Boston: J.P. Jewett, 1856), 372, 374.

Black Laws, that is, did not reflect ambivalence or inconsistency, but broad antipathy toward African Americans. Ohio abolitionists insightfully declared that the object of the laws was to "oppress, harass, impoverish, and degrade the colored people among us" and that "the spirit of legislative persecution, directed against the colored people, kept almost an even pace with the growth of slavery in the South, and of the social and political influence of the slaveholding states."[40] The Black Laws, especially those of 1804 and 1807, which retained fugitive slave clauses, indicated that the early Ohio legislatures had neither an extensive desire to interfere with the operation of the federal Fugitive Slave Law of 1793, nor offend the slaveholders in the South, nor encourage an influx of runaway slaves from the slaveholding states into their own state. Reconsecrating the power of slaveholder and their agents, the Blacks of 1804 and 1807 supported the federal fugitive slave policy faithfully and generated the same lethal effect of the federal Fugitive Slave Law of 1793, which was a creation of temptation to kidnapping. The deep examination of the original contents and changes of two Black Laws reaffirmed the first state fugitive slave policy in early stage of Ohio.

The Establishment of the State Fugitive Slave Policy and the Black Laws

Notwithstanding the prevalence of anti-black and pro-southern fugitive slave policy as expressed clearly in the Black Laws of 1804 and 1807, Ohio's non-interference policy regarding the recapture right of slaveholders and their agents was undermined under the substantial threat of violation of personal liberty of blacks. Since the early pro-Southern fugitive slave policy of the Ohio legislature was in constant tension with the abolitionist appeal to the religious and moral sense of the clear injustice of returning fugitive slaves, the Ohio legislature could not

[40] *The Philanthropist*, November 25, 1836.

maintain its proslavery tenet all the time without any question. In a practical sense, furthermore, as the illegal kidnapping of blacks came to increase in considerable numbers, the state legislature had to regulate the arbitrary operation of slavecatchers in the state and devise legal procedures for the examination of the claims of the slaveholders or their agent for the alleged fugitive slaves and their claim for freedom.

The basic principles of the recapture and rendition of fugitive slaves were institutionalized in the federal Fugitive Slave Law of 1793.[41] The federal law empowered slaveholders or their agents to seize fugitive slaves without a warrant and without the aid or approval of either state or federal authorities. To remove a fugitive slave from one state to another, a claimant needed only to go before a state or federal judge and produce "proof to the satisfaction of such judge or magistrate" that the person was a runaway. The alleged fugitive slave was neither entitled to a trial by jury nor allowed testimony. Judges could prevent introduction of any evidence on the behalf of the alleged fugitive slave. In contrast, the oral testimony of the slaveholder could be sufficient for the judge's final decision. Then, the judge could issue a certificate of removal. In addition, any person who obstructed the slaveholder in the recapture process or who harbored or rescued the escaped slave could be fined up to five hundred dollars.

Even though the law in the first place originated not over the rendition of a fugitive slave but over the rendition of three Virginians accused of kidnapping a free black, it still retained a legal loophole to create a huge temptation to kidnapping of free blacks, not to mention fugitive slaves. Therefore, the first legal response of the states to the federal Fugitive Slave Law took the form of anti-kidnapping legislation, not outright personal liberty law. The absence of any

[41] An Act respecting fugitives from justice, and persons escaping from the service of their masters (Fugitive Slave Act), I Stat. 302 (1793).

meaningful safeguards in the Fugitive Slave Law served as effective cover for kidnappers. Particularly vulnerable in this regard were free blacks claimed as runaways. Because any blacks claimed as runaways were denied the right of defense and due process of law under the federal Fugitive Slave Law, and because Congress had not provided a remedy for kidnapping, the potential for abduction and enslavement of free blacks was great. For this reason, historian Don E. Fehrenbacher has defined the 1793 Fugitive Slave Law as "an invitation to kidnapping, whether as a result of honest error or deliberate fraud."[42]

In the absence of any national anti-kidnapping law, several northern states took quick legislative action to deter or punish kidnapping, as they became increasingly aware of its prevalence. Pennsylvania and Massachusetts had already adopted anti-kidnapping laws, earlier. Massachusetts passed its anti-kidnapping law as part of the 1785 *habeas corpus* statute, and the Pennsylvania legislature adopted an anti-kidnapping law in 1788, which provided a penalty of six months hard labor for kidnapping any blacks with the intention of selling them into slavery. Furthermore, the New York Manumission Society, in 1803, alerted its members to the fact that a new form of kidnapping based on false claims made under the federal Fugitive Slave Law had recently increased. In 1808, the New York legislature adopted an important anti-kidnapping law, which stipulated a penalty of fourteen years of hard labor for the kidnapping of blacks. This law also provided that blacks "not being a slave" could not be removed from the state without "due process of law."[43]

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[42] Don E. Fehrenbacher, *Slavery, Law, and Politics: The Dred Scott Case in Historical Perspective* (New York: Oxford University Press, 1981), 21; Harold M. Hyman and William M. Wiecek, *Equal Justice Under Law: Constitutional Development, 1835-1875* (New York: Harper & Row, 1982), 105.

[43] Morris, *Free Men All*, 23-28.

In Ohio, the 1804 Black Law provided a basic anti-kidnapping measure. Fundamentally, the law was designed to stipulate state legal procedures for the aid of slaveholders or their agents in the recovery of their fugitive slave. Upon providing satisfactory proof that the person claimed was a runaway, a state judge or justice of the peace was empowered to "direct the sheriff or constable to arrest…and deliver" the fugitive slave to the claimants. The anti-kidnapping measure was treated in the last section of law, which stipulated the penalty of a fine of one thousand dollars for anyone removing, or attempting to remove, a black person from the state without first proving the claim of the slaveholder for the alleged fugitive slave.[44] However, the revised Black Law in 1807 paved the way for illegal abduction by the false claim of unscrupulous slavecatchers, by eliminating state procedures and anti-kidnapping clauses of the 1804 Black Law, to say nothing of prohibiting the testimony of a black or mulatto person against a white person.[45] What was worse, the 1807 amendment made more unshakable the original intent of the Black Law that only free blacks could enter and live in Ohio. By reinforcing the settlement requirements of black people, this 1807 amendment reaffirmed the basic assumption that black immigrants were fundamentally runaways. Without a certificate of freedom, and now unless black immigrants found two or more sureties to give bond of five hundred dollars to guarantee that they would not become a county charge, every black person would be presumed to be a fugitive slave. Now that there was no anti-kidnapping law in Ohio, moreover, unscrupulous slavecatchers would be able to chase and seize any blacks, even though they had either a certificate or sureties for proof of freedom.

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[44] An Act to regulate black and mulatto persons, 2 Laws of Ohio 63 (1804).

[45] An Act to amend the last named act, "An act to regulate black and mulatto persons," 5 Laws of Ohio 53 (1807).

Indeed, the 1807 amendment was passed in the name of a state emergency bound up with the fugitive slave issue. Representative Philemon Beecher, who introduced the Black Law of 1804, assumed the leadership for the revision of the 1804 Black Law in the 4th General Assembly. Arguing that Ohio was on the verge of a civil war with the slaveholders of Virginia and Kentucky because of fugitive slaves settling in the Native American communities just west of Ohio, Representative Beecher proposed to make the Black Law more stringent.[46] If we can vouch for the reliability of his comment on the fugitive slave question and the imminent civil war as a result of it as his original intent for this revision, the importance of the 1807 Black Law cannot be overestimated because it can be defined as the first complete fugitive slave law, not just a revised immigration law, made in the northern states. First of all, the Black Law of 1807 neutralized the anti-kidnapping clause of the 1804 law, which stipulated a penalty of one thousand dollars for illegal abduction. Secondly, the 1807 law strengthened the penalty for harboring fugitive slaves or for hindering lawful owners from retaking them. Thirdly, this law provided a new anti-black section which prohibited a black person from testifying in a court case which involved whites. Considering the legislative context, this testimony law was not simply designed to discriminate against blacks in criminal or civil cases involving whites in general. Rather, it must have been devised to limit the admissibility of evidence of the alleged fugitive slaves' testimony against slavecatchers. Indeed, the state courts would fail to prosecute slavecatchers in several kidnapping cases due to the lack of evidence because the only witness was a black. In short, the 1807 amendment was a state fugitive slave law drafted to assuage slaveholders' complaints and doubts about the fugitive slave policy of Ohio and, therefore, to facilitate the recapture and removal of fugitive slaves. So far as the reclamation of fugitive slaves was concerned, the Black Laws of 1804 and 1807 were intended thoroughly to conform to

[46] Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 50-51.

the federal Fugitive Slave Law of 1793. This is confirmed by the fact that the Ohio legislature officially approved the federal Fugitive Slave Law of 1793 by reprinting it in at least five volumes of Ohio law between 1804 and 1831.[47]

The Growth of Kidnapping and the Emergence of the Politics of Personal Liberty

Considering Ohio's commitment to the prosouthern fugitive slave policy, the legalized operation of slavecatching of slaveholders was vital to the success of the state policy. Despite the reinforcement of prosouthern fugitive slave policy of Ohio through the revision of the 1804 Black Law, however, the amicable relations between Kentucky and Ohio concerning enforcement of the fugitive slave laws were gradually disturbed by the increasing demand of slave labor. As the value of slaves and the steady demand for them increased little by little, and as the increasing escape of slaves did serious damage to the slaveholders, slavecatchers' efforts grew more energetic and attempts to carry off free blacks, by force or by fraud, became conspicuous. Therefore, while fugitive slaves who made it to Ohio were not always welcome, neither were the slavecatchers who chased after them. This situation led to collisions between slavecatchers and whites who sympathized with victimized blacks.[48]

The *Jane* case, the first fugitive slave case in Ohio, was significant because it dramatized the collision between slavecatchers and antislavery advocates, heralding the antislavery turn of the state fugitive slave policy of Ohio. This case regarding the requisition by the Virginia Governor for the arrest and return of an escaped Virginia slave woman named Jane in 1810 also

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[47] Cochran, *The Western Reserve and the Fugitive Slave Law*, 72; Leo Alilunas, "Fugitive Slave Cases in Ohio Prior to 1850," *Ohio Archaeological and Historical Quarterly* 49 (April 1940): 164.

[48] Cochran, *The Western Reserve and the Fugitive Slave Law*, 72.

revealed much about the early antislavery attitude of citizens of Marietta and the official stand of the Governor of Ohio. Jane was a slave of Joseph Tomlinson, Jr., in Brooke County, Virginia. In 1808, she was charged with a felony for stealing four dollars' worth of merchandise and was sentenced to death. Under Virginia law at this time, a slave under sentence of death could be sold to a new owner outside of Virginia. The Governor of Virginia asked for a reprieve, postponing her execution until November 1, 1809. But, the jailer, who believed the death penalty was too harsh, deliberately left the door of the jail open, and Jane fled to Ohio and took refuge in Marietta. There she married a free black, had a child, and lived in peace for more than a year. Then, Jacob Beeson, a professional slavecatcher, appeared in Marietta and tried to forcibly carry Jane and her child off to Virginia. Abner Lord, her employer, and his antislavery neighbors, blocked the rendition.[49]

A disgruntled Beeson petitioned Virginia Governor John Tyler for assistance. On February 5, 1810, Tyler sent a letter to Ohio Governor Samuel Huntington, asking that Jane be delivered to Beeson, the official agent of Virginia. Beeson also complained to Governor Huntington that Marietta's justice of the peace and local residents refused to turn Jane over to him. Governor Huntington ignored Beeson's complaint, but replied to Tyler, refusing to comply with the Governor's requisition on the ground that the Fugitive Slave Law of 1793 did not authorize the executive of a state to interfere with the apprehension of a fugitive slave. Then, Tyler wrote Huntington on April 26, 1810, demanding the extradition of Jane as a fugitive from

[49] Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 160-64; Alilunas, "Fugitive Slave Cases in Ohio Prior to 1850," 170-72; Smith, *A Political History of Slavery*, 20.

justice, and Huntington reluctantly ordered her arrest on May 21. Beeson returned Jane to Virginia, where Tyler pardoned her but also required Beeson to sell Jane back into slavery.[50]

On the one hand, the *Jane* case highlighted the growing antislavery sentiment among the white sympathizers with a persecuted black and the example of organized resistance with physical force against slavecatchers. On the other hand, it illustrated the widespread legal confusion that pervaded every step of the enforcement of the federal Fugitive Slave Law of 1793. Although the federal Fugitive Slave Law was initially designed to avoid such legal confusion and to ensure that slaveholders would be able to recover their fugitive slaves in any U.S. state and territory, it had become apparent that state authorities interpreted the 1793 Fugitive Slave Law in various ways and with a variety of purpose. In response to a request from Kentucky Governor Tyler for the return of Jane, Governor Huntington of Ohio initially rejected it on the ground that the executive of a state could not intervene in the fugitive slave case. From his perspective, it was not the responsibility of a state to enforce the federal Fugitive Slave Law. Moreover, it is apparent that the elimination of the sixth section of the 1804 Black Law, which provided for state procedures in the administration of the recapture and removal of fugitive slaves, gave him more confidence about his judgment in rejecting the requisition of the Kentucky Governor Tyler. Although Tyler took evasive action of requesting the extradition of Jane as a fugitive from justice because he did not want to complicate the legal issue concerning the duty of states, this legal confusion about the duty and responsibility of states surrounding kidnapping and rendition

[50] Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 160-64; Alilunas, "Fugitive Slave Cases in Ohio Prior to 1850," 170-72.

would remain controversial until the decision of the U.S. Supreme Court in *Prigg* v. *Pennsylvania*.[51]

Undoubtedly, slaveholders had good reason to complain about the difficulties of recovering runaway slaves. Under the political pressure of disgruntled slaveholders, in 1817, the Kentucky legislature made an official complaint to Ohio by adopting a resolution charging that the states north of the Ohio River were not passing or enforcing laws for the effectual reclamation of fugitive slaves. Kentucky Governor Gabriel Slaughter, at the request of the legislature, sent a letter of complaint transmitting a copy of these resolutions to Ohio Governor Thomas Worthington. In this letter, Kentucky Governor Slaughter complained that Kentuckians encountered "serious obstructions to the recovery of their property" in Ohio. Demanding the prompt legislative action for preservation of the property rights of Kentucky slaveholders, Governor Slaughter tried to shift the responsibility for the failure of the recovery of runaway slaves onto "a defect in…[Ohio's]…laws, or the want of promptitude and energy in those who enforce them, or the prejudices of…[Ohio's]…Citizens against slavery." In a reply denying these accusations, Ohio Governor Worthington retorted that the Fugitive Slave Law of 1793 was being enforced well, ascribing the failed recovery attempts to the sloppy work of Kentucky slavecatchers as follows:

> "I can assure you, Sir, that so far as I am informed there is neither a defect in the laws nor want of energy on the part of those who execute them. That a universal prejudice against the principles of slavery does exist and is cherished, is to be expected, and that a desire as universal to get rid of every species of negro population exists, is, in my opinion, as certain. The fugitive act is fully executed. You know, Sir, that the writ of *habeas corpus* cannot be denied, and that it too often happen that the proofs of the right of property are defective. Under such circumstances the judge must act according to the facts."

[51] *Prigg* v. *Pennsylvania*, 41 U.S. (16 Pet.) 539 (1842). The U.S. Supreme Court ruled that any state could not adopt a legislation regulating the return of fugitive slaves and the federal government had a sole responsibility of executing the federal Fugitive Slave Law of 1793.

Even though it seemed that Ohio Governor Worthington was more concerned about violation of the laws of Ohio than he was about the legal rights of the alleged fugitive slaves, it was obvious that the apparently firm fugitive slave policy of Ohio in favor of slaveholders was gradually faltering. More importantly, Governor Worthington implied that the writ of *habeas corpus* was allowing fugitive slaves seeking to establish unwarranted claims to freedom.[52]

As the prosouthern fugitive slave policy of Ohio lost its momentum since the adoption of the Black Laws of 1807, the slavecatchers' difficulty in recovering fugitive slaves was more fully revealed in an interesting 1819 case. In 1819 a free black Ohio girl named Venus was kidnapped by William Bell and taken to Fleming County, Kentucky. Ohio Governor Ethan Allen Brown quickly made a requisition to Kentucky Governor Gabriel Slaughter for the arrest and extradition of Bell. Governor Slaughter took prompt action to arrest Bell and deliver him to the agent of Ohio. In acknowledgement, Ohio Governor Brown wrote as follows:

> I request you to receive the expression of the high satisfaction and gratification I feel at the ready and energetic manner in which you seem determined to bring to justice an offender of this description. While enormities like the one complained of are committed, the citizens of Kentucky should not complain that those of Ohio should feel an interest in requiring proof of ownership however inconvenient to the proprietors, before they consent to the removal of negroes against their will. The want of such evidence and violence of attempting to remove them without warrant of the constituted authority, I suspect, have been the chief causes of difficulty which actual proprietors have experienced in reclaiming their slaves in Ohio; and the villainy of unprincipled

[52] Alilunas, "Fugitive Slave Cases in Ohio Prior to 1850," 166; Cochran, *The Western Reserve and the Fugitive Slave Law*, 72-73; William Henry Smith, *Political History of Slavery: Being An Account of the Slavery Controversy from the Earliest Agitations in the Eighteenth Century to the Close of the Reconstruction Period in America*, with an Introduction of Whitelaw Reid, 2 vols. (New York: G.P. Putnam's Sons, 1903), 1: 21; Governor Gabriel Slaughter to Governor Thomas Worthington, September 4, 1817, University of Kentucky, Special Collections (Lexington: Margaret I. King Library); Worthington to Slaughter, October 23, 1817 (Frankfort: Kentucky Historical Society). John Craig Hammond, *Slavery, Freedom, and Expansion in the Early American West* (Charlottesville: University of Virginia Press, 2007), 144.

> kidnappers has aroused the people in some districts into a vigilance which I hope you will think laudable, to guard against the perpetrators of so dark a crime.[53]

Governor Brown 's statement indicated that slavecatchers had tended to disregard legal procedures demanded in the administration of the federal Fugitive Slave Law of 1793 and that they had abused the federal and state fugitive slave laws, claiming them as unconditional authority to seize and remove any blacks in Ohio. By the end of the 1810, due to the abuse of federal and state fugitive slave laws by slavecatchers, Ohio reached the point where she seriously questioned the state fugitive slave policy in favor of slaveholders, which produced "so dark a crime." In response to the violation of federal and state fugitive slave laws by the unscrupulous slavecatchers, the Ohio legislature and the judiciary gradually began to increase state regulation and supervision over slavecatchers in the enforcement of the fugitive slave laws. In particular, the judiciary began to enmesh the claimants in courtroom formalities and legal technicalities, making the recovery of fugitive slaves more difficult and less certain.

An early runaway slave case in Steubenville provides another example of the growing popular resistance of antislavery advocates to slavecatchers. In 1816, one slaveholder chased a fugitive slave to Steubenville, but the local residents resisted his attempt to arrest the runaway, refusing to give him up. Enraged by this aggression, the slaveholder gave warning to the locals "hiring or harboring" his slave that they would face serious consequences because he was determined to risk his life "in defense of…[his] property." In another case, the Quaker community of Mount Pleasant caused one Virginia slaveholder warn emigrants from "any of the

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[53] Governor Ethan Allen Brown to Governor Gabriel Slaughter, February 14, 1820, Brown Papers. Quoted in Smith, *A Political History of Slavery*, 1: 22.

slaveholding states" to avoid the region. According to his warning notice, he was attacked by mobs who convinced his slave Ben to escape by declaring "that he was as free as I was."[54]

In some cases, a judge's personal inclination influenced the status of a black seeking refuge in the free states. In 1812, a fugitive slave case occurred in central Ohio. The alleged fugitive slave, seized at Delaware, was taken from the custody of his mounted slavecatcher by a crowd and brought before Colonel James Kilbourne, a justice of the peace and founder of the township, known for his antislavery convictions. Kilbourne released the alleged runaway, who was then sent north aboard one of the government wagons engaged at the time in carrying military supplies to Sandusky.[55] As Ohio Governor Worthington refused the request of Kentucky Governor Slaughter for the extradition of Jane as a fugitive from labor according to his arbitrary interpretation on the federal Fugitive Slave Law, so judges or state trial courts were free to go their own way because there was no guidance from the highest tribunal with regard to the removal of fugitive slaves. Indeed, the state courts sometimes led marked changes in the state fugitive slave policy through their decision.

While antislavery sentiment and controversy were growing around the increasing kidnapping by slavecatchers, who gradually came to have deep distrust of the unsympathetic Ohio officials, the application of Missouri for admission to the Union as a slave state further crystallized the growing sense of crisis about intrusion of slavery. The prospect of slavery expanding into the territories of the Louisiana Purchase aroused deep public anger in Ohio; many Ohioans were alarmed by the South's triumph in extending slavery. As a consequence, public

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[54] *Western Herald,* April 12, 1816, January 31, 1817; *Western Spy and Miami Gazette*, June 27, 1817; Hammond, *Slavery, Freedom, and Expansion*, 145.

[55] Wilbur H. Siebert, *The Underground Railroad from Slavery to Freedom*, With an Introduction by Albert Bushnell Hart (New York: The McMillan Company, 1898), 38; Alilunas, "Fugitive Slave Cases in Ohio Prior to 1850," 170.

sentiment in Ohio turned rapidly anti-southern. Now that the direct influence of slavery in Ohio was recognized conspicuously by the existence of fugitive slaves and the slavecatchers chasing after them, most of the antislavery agitation and debates were centering on the illegal kidnapping and the arbitrary enforcement of the federal Fugitive Slave Law by the slavecatchers, who were unsympathetic to Ohio law. Some newspapers in eastern Ohio began to refuse to print fugitive slave advertisements, and on the Western Reserve a Virginia slaveholder who chased after two runaway slaves and tried to recapture them was arrested and convicted of kidnapping.[56]

However, the most important state action was the adoption of the anti-kidnapping law as a sort of personal liberty legislation. Blatant violation of the sovereign law of Ohio by slaveholders and slavecatchers combined with the eruption of the Missouri Controversy to compel the Ohio legislature to pass an act, on January 25, 1819, making the kidnapping of free blacks a crime of misdemeanor.[57] This anti-kidnapping law noted that "upon pretence of seizing fugitives from service," "unprincipled persons" had "kidnapped free persons of colour within this State," and sold "them into slavery." "To put a stop to this nefarious and inhuman practice," the legislature provided a punishment of one to ten years in the penitentiary of the state at hard labor for removing, or attempting to remove, a free black from the state "by violence, fraud, or deception," as a high misdemeanor. In order to legally remove a fugitive slave, the law required the slaveowner first to take the alleged fugitive slave before some judge or justice of the peace and obtain a certificate of removal, as set out in the federal Fugitive Slave Law of 1793.[58]

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[56] Ratcliffe, *Party Spirit in a Frontier Republic*, 231-33.

[57] An Act to punish kidnapping, 17 Laws of Ohio 56 (1819); Middleton, *The Black Law in the Old Northwest*, 26.

[58] Ohio *House Journal: The 17th General Assembly*, January 25, 1819; *The Philanthropist*, February 27, 1819; Cochran, *The Western Reserve and the Fugitive Slave Law*, 73; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 52-53.

Even though this anti-kidnapping law was intended for the protection of free blacks in Ohio, it was also drafted to prevent fugitive slaves from being removed arbitrarily from Ohio by providing clear state procedures for the recovery and removal of runaway slaves. By restoring the state procedures eliminated by the Black Law of 1807, this law had the effect of allowing state judges with antislavery leaning to invalidate the claims of the slaveholders or their agents on the basis of legal technicalities. Furthermore, this anti-kidnapping law was of special interest in that it explicitly abrogated the slaveholder's general right of direct recaption by self-help alone under common law, by forbidding the removal of any alleged fugitive slave from the state without conforming to the state procedure outlined in the federal Fugitive Slave Law of 1793. As Sir William Blackstone defined it in *Commentaries on the Laws of England*, the common law right of recaption permitted private action to recover property wrongfully taken, or a wife, a child, or servant wrongfully detained, so long as the exertion of the right did not cause "strife and bodily contention, or endanger the peace of society."[59] Whereas the other northern states continued to accept the proposition that a slaveholder's common law right of recaption existed and was still effective in spite of their effort to provide legal safeguards for free blacks in their states, Ohio moved in a new direction to eliminate one of the cherished rights of the claimants.

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[59] Sir William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford: Clarendon Press, 1765-69), III: 4-5. In 1847, Salmon P. Chase argued that the general right of recaption as Blackstone intended to define it referred to recovery of a servant wrongfully detained by another person, "not of an escaping servant at all." Therefore, according to him, there was no such right of recaption at common law as claimed in the case of a fugitive slave. He concluded as follows: "Certainly the constitution did not intend to confer any right of recaption on masters of escaping servants, for every such recaption is a seizure and imprisonment without process, which the constitution expressly forbid." Salmon P. Chase, *Reclamation of Fugitives from Service: An Argument for the Defendant Submitted to the Supreme Court of the United States, at the December Term, 1846, in the Case of Wharton Jones vs. John Van Zandt* (Cincinnati: R.P. Donogh & Co., 1847), 89-91.

The direction of this anti-kidnapping legislation definitely dovetailed with the evolution of the state fugitive slave policy towards the establishment of personal liberty politics.[60]

The change in the fugitive slave policy of Ohio, moving toward the fortification of the personal liberty principle became clear in the next legislature, in which there was an attempt to make the anti-kidnapping law of 1819 more efficient. On December 27, 1819, Representative Thomas M'Millan of Wayne County, from the Joint Committee of Revision, presented a bill to punish kidnapping. After several revisions of the original draft and facing bitter opposition, on January 26, 1820, the final draft of the anti-kidnapping law, entitled "An Act to prevent kidnapping," was passed. First of all, this law raised the minimum penalty for violations to five years and the maximum to twenty years, and it clearly stipulated that all blacks should "be presumed and adjudged to be free" under this law. Enlarging the meaning of abduction, in addition, the second section provided for the same heavy penalty for enticing the victims away from the state, "by false pretence, artifice or device," with intent to sell them into slavery, not just by forceful seizure within the state. Most significant was the third section, which nullified the testimony clause of the 1807 Black Law. Through this section, a black person was entitled to testify as a witness in a court case, upon oath or affirmation. The last section reaffirmed the state procedures for the removal of a fugitive slave, providing that any masters could not remove a fugitive slave "without having first complied with the requisitions of the before recited act of Congress" under the penalty of up to five hundred dollars or sixty days of imprisonment, or both at the discretion of the court.[61]

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[60] Morris, *Free Men All*, 29;

[61] Ohio *House Journal: The 18th General Assembly*, December 27, 31, 1819, January 4, 6, 7, 8, 17, 26, 1820.

This revised anti-kidnapping law was the most radical of all anti-kidnapping laws in the northern states and exhibited the Ohio legislature's resistance to the operation of slaveholders and their agents in hunting down runaway slaves in its territory. Even though Ohio's anti-kidnapping legislation supported the recapture of fugitive slaves who lawfully owed service and it presented a basic guideline of compliance with the federal Fugitive Slave Law of 1793, it was apparent that the Ohio legislature intended to avoid unnecessary conflicts and disputes with federal authorities and neighboring slave states that expected Ohio's cooperation in the recapture and removal of fugitive slaves, as appeared in later similar legislations. If this 1820 amendment had been accepted in the Senate, it would have served as a powerful tool to discourage slaveholders from kidnapping a free black, and even from chasing fugitive slaves down in Ohio. But, unfortunately the House made a procedural mistake in taking the vote on the final passage of the bill and the Senate returned the bill without any vote for its final passage. In conclusion, the bill was rejected.[62]

However, the failure of the adoption of a reinforced anti-kidnapping law in 1820 did not mean the frustration of the will of the Ohio legislature and antislavery Ohioans toward the establishment of personal liberty politics. Nearly every Ohioan admitted that the state possessed ample power to protect its free blacks and to punish kidnappers, and the adoption of effective anti-kidnapping laws could even deter slaveholders from recapturing and removing fugitive slaves by making their recovery more difficult, essentially nullifying the common law right of recaption by slaveholders. The interference with the slaveholder's right over fugitive slaves, which was widely believed to be protected in common law and the Constitution, might have been, at first, an unintended consequence of extending legal protection to free blacks, but it was

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[62] Ohio *House Journal: The 18th General Assembly*, January 27; Ohio *Senate Journal: The 18th General Assembly*, January 27, 1820

intentional. Considering the growing hostility of white sympathizers in Ohio to slaveholders and their agents, and given the increasing sense of threat and humiliation among Ohio legislators over the frequent, relentless violations of the sovereign law of Ohio by them, however, it was evident that the organized action of the state legislature for the adoption of an anti-kidnapping law, unlike disorganized, individual responses of the state judges to the claimants, must have been more deliberate, aiming to frustrate the operation of federal fugitive slave legislation. At all events, the intervention in the slaveholder's right over fugitive slaves became increasingly well calculated to discourage slaveholders from chasing runaway slaves down in the free territory of Ohio, especially in the aftermath of the Missouri crisis, and, ultimately, to provoke the whole class of slaveholders in the South with a series of personal liberty laws.

It gradually became evident that the adoption of the anti-kidnapping law in 1819 was not sufficient to suppress the avarice of the slavecatchers. As fugitives became more valuable and more numerous, slavecatchers swelled in both number and determination. Slavecatchers became more and more reckless in hunting down fugitive slaves or bolder in kidnapping free blacks, paying little attention to the federal and state fugitive slave laws. They naturally preferred to avoid the delay and expense of the legal procedures by which the recapture and removal of a fugitive slave could be executed. As a consequence, in 1831, the Ohio legislature sought to revise the 1819 anti-kidnapping law for its more effective execution. Reaffirming the state procedures for the recapture and removal of fugitive slaves, the 1831 amendment reduced the maximum penalty for kidnapping a fugitive slave to seven years but raised the minimum penalty

to three years. By this revision, the Ohio legislature once again demonstrated its commitment to personal liberty politics.[63]

Personal liberty politics, however, did not much diminish anti-black sentiment among Ohio's whites. Despite the maintenance of the state fugitive slave policy for the protection of personal liberty of blacks, and even though the Missouri crisis galvanized antislavery sentiment considerably, they did not spark much sympathy for blacks. Most Ohioans still wanted to keep any more blacks from entering and settling in their state and the legislature tried to reflect the desire of Ohioans against black immigration. In 1828, the House passed a bill "to prohibit the future migration to, and settlement in this state, of black and mulatto persons, and for other purposes," however the Senate killed the bill by a single vote.[64] In 1829, the legislature reinforced Ohio's racial discrimination policy by excluding blacks from public school.[65] The Cincinnati riot of 1829 provided the bloody picture for the still strong anti-black sentiment, as illustrated earlier. In 1832, the Ohio legislature displayed its determination to retain the basic policy for the prevention of black immigration into the state by trying to pass a bill "to prevent emigration and settlement of mulatto persons within state." Dissatisfied, the Select Committee of the Senate made a report urging federal support for the colonization society and more strict legislation to prevent additional immigration of free blacks and fugitive slaves.[66]

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[63] An Act to prevent Kidnapping, 17 Laws of Ohio 56 (1831); Middleton, *The Black Laws in the Old Northwest*, 27; Ohio *Senate Journal: The 29th General Assembly*, January 24, 31, February 9, 1831; Ohio *House Journal: The 29th General Assembly*, February 15, 1831.

[64] Ohio *House Journal: The 26th General Assembly*, January 2, February 5, 9, 11, 1828. Some Ohioans continued to present the petition for the passage of a law to prevent free blacks from residing in Ohio, and the House responded to this petition by passing such a law in this session.

[65] Ohio *Senate Journal: The 27th General Assembly*, December 12, 27, 1828; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 55-56.

[66] Ohio *Senate Journal: The 30th General Assembly*, January 13, 14, 30, February 1, 7, 1832.

Militant Abolitionism and the Decline of the Personal Liberty Politics

The emergence of militant abolitionism in the 1830s marked a turning point in the transition from the mild and passive personal liberty politics of anti-kidnapping legislation to the aggressive and radical personal liberty politics based on the claim of the unconstitutionality of the 1804 Black Law and the federal Fugitive Slave Law. In the 1830s, Ohio abolitionists increasingly took this radical stance, fundamentally altering the nature and direction of the legal debate over the personal liberty of fugitive slaves. One key abolitionist who suggested a new constitutional theory regarding the Black Laws and on the federal Fugitive Slave Law of 1793 was James G. Birney, who was later the Liberty Party's candidate for President in both 1804 and 1844.[67] First, Birney's interpretation of the 1804 Black Law significantly predated Justice Joseph Story's 1842 opinion in *Prigg* v. *Pennsylvania*.[68] According to Birney, the Constitution forbade the states to pass any acts which would prevent the recapture and removal of fugitive slaves, but by the same taken, neither states nor individuals were required to aid slaveholders in the recovery of their fugitive slaves. In his conclusion, therefore, the 1804 Black Law regulating the reclamation of fugitive slaves was unconstitutional. Secondly, Birney's claim on the

[67] James G. Birney was also a victim of horrifying riots targeting abolitionists in the mid-1830s. After moving to Cincinnati, in 1836, he began publication of an immediast paper, *The Philanthropist*. The operation of an abolitionist paper stirred up anti-abolitionist tension in the city. One anonymous Whig in Cincinnati denounced Birney, stating that his abolitionist activity was an insult to the slaveholding neighborhood and an attempt to browbeat public opinion in the city. To prevent Birney from printing, mobs of Cincinnatians repeatedly sacked his office and destroyed his printing press. *The Philanthropist*, January 1, 1836. For deeper explanations of the rise of anti-abolitionism and race riots, See Linda Kerber, "Abolitionists and Amalgamators: The New York City Race Riots of 1834," *New York History* 48, no. 1 (January 1967): 28-40; Richards, *"Gentlemen of Property and Standing": Anti-Abolition Mobs in Jacksonian America*; Paul A. Gilje, *The Road to Mobocracy: Popular Disorder in New York City, 1763-1834* (Chapel Hill: The University of North Carolina Press); James Brewer Stewart, "The Emergence of Racial Modernity and the Rise of the White North," *Journal of the Early Republic* 18, no. 2 (Summer 1998): 181-271.

[68] *Prigg* v. *Pennsylvania*, 41 U.S. (16 Pet.) 539 (1842).

unconstitutionality of the federal Fugitive Slave Law was derived from the supremacy of the Article VI of the Northwest Ordinance of 1787 over the Constitution. According to his view, Article VI, which prohibited slavery in the Northwest Territory, was an antislavery document that set the western boundary for slavery. Therefore, the Constitution had no power to legislate on the matter of slavery and, in turn, could not create a slave. In a state such as Ohio where slavery did not exist under the influence of the Article VI, all blacks were free unless they had escaped from a slave state. Slaves who entered the free soil with the master's consent became free. In addition, since Birney regarded the Ordinance of 1787 as a compact between the original states and the Northwest Territory, fugitive slaves escaping from those states only were subjected to rendition. Finally, Birney pointed out that the federal Fugitive Slave Law did not provide the writ of *habeas corpus* and the right of trial by jury guaranteed in the Ordinance, reaffirming its unconstitutionality.[69]

Birney's new constitutional arguments undergirded the arguments in the 1837 *Matilda* case, in which Salmon P. Chase appeared as a counsel for a fugitive slave and fought vainly to prevent the removal of Matilda Lawrence. Matilda had been a slave of Larkin Lawrence in Virginia but escaped from him while they were traveling across Ohio. She worked as a maid for Birney until she was suddenly recaptured by John M. Riley, a Cincinnatian reputed to be a professional slavecatcher. Chase was engaged to defend her. Pointing out the nature of slavery as a product of positive law, he argued that when a slaveholder voluntarily brought a slave onto free soil the slave automatically became free and could not be reclaimed as a fugitive slave under the federal Fugitive Slave Law of 1793. He also insisted that the federal fugitive law was void and null, not only because it conflicted with the Constitution, but also because it ran counter to

[69] *The Philanthropist*, February 24, March 17, 24, 31, 1837; Fladeland, "James G. Birney's Anti-Slavery Activities in Cincinnati," 253-54.

the spirit of the Northwest Ordinance of 1787, which guaranteed the right to the writ of *habeas corpus* and the benefit of trial by jury. He continued to stress the importance of the Ordinance of 1787. Because the Ordinance was a compact between the citizens of Ohio and the original states, its fugitive slave clause stipulating the return of a fugitive slave only applied to those who fled from one of the original states. Therefore, the federal Fugitive Slave Law targeting a runaway slave even from a new state such as Kentucky violated the Ordinance. But Chase's argument did not convince the judges and Matilda was delivered to her owner. Nevertheless, the Birney-Chase argument would have a lasting influence on the antislavery debate with regard to fugitive slaves in Ohio, setting forth all the important constitutional bases necessary to challenge the legitimacy of federal or state fugitive slave laws.[70]

In addition to changing the nature of the debate regarding fugitive slaves by casting doubt on the constitutionality of the federal Fugitive Slave Law of 1793, the emergence of militant abolitionism engendered a marked change in the direction of the debate with respect to fugitive slaves through the creation of new legal tactics. Abolitionists and antislavery radicals began to insist on the need for new legal protections for fugitive slaves such as the right of trial by jury, the writ of *habeas corpus*, the right of appeal, or the testimony right of a black person. More radically, they began to uphold the adoption of personal liberty laws intended to interfere with the slaveholder's absolute right over fugitive slaves. They no longer wanted to depend on the

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[70] Salmon P. Chase, *Speech of Salmon P. Chase, in the Case of the Colored Woman, Matilda, who was brought before the Court of Common Pleas of Hamilton County, Ohio, by Writ of Habeas Corpus, March 11, 1837* (Cincinnati: Pugh & Dodd, Printers, 1837); Alilunas, "Fugitive Slave Cases in Ohio Prior to 1850," 174-75; William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848* (Ithaca: Cornell University Press, 1977), 191-93; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 112-13, 167-68; Morris, *Free Men All*, 89.

indirect or unintended effects of the anti-kidnapping laws, the deliberate use of courtroom technicalities, or the luck of a judge's personal feeling.

The rapidly growing antislavery forces in Ohio took up the fugitive slave issue as a central cause of the state's antislavery movement. On July 4, 1837, the Lorain County Anti-Slavery Society passed a resolution asking for the right of trial by jury for an alleged fugitive slave. Since the Ohio constitution declared "that the right of jury trial shall be inviolate" and also because it was "universal practice in this State, to deliver up its inhabitants into slavery, upon the sole testimony of an interested claimant, without such jury trial," according to the Society, "such practice, under whatever pretended authority followed it, is contrary to the genius of our Government, and should immediately be abandoned." In interrogating candidates in a state election -- as a new political tactic that became popular among Ohio abolitionists in 1837 -- one of the main questions concerned their views about securing the constitutional right of trial by jury to fugitives from labor within the state of Ohio. At a meeting of the delegates of the Anti-Slavery Societies of Belmont County, on September 9, 1837, the Committee on Political Action resolved to request an answer from every candidate to the question, "Should any person be deprived of liberty without the benefit of a trial by jury?"[71]

In the state legislature, antislavery radicals such as Benjamin F. Wade, Leicester King, Samuel Stokely, and Oramel H. Fitch took the lead in advancing the debate with regard to the introduction of new legal safeguards for a fugitive slave in court cases. Most of them were from the Western Reserve in northeastern Ohio, a stronghold of Whig antislavery. From his first term in the legislative session of 1837-1838, Wade plunged right into the struggle against the slaveholders, a fight which was to enlist all his energies until the last slave was free. Within two

[71] *The Philanthropist*, July 21, October 6, 1837.

years of his appearance in the state senate, he had succeeded in becoming known as one of his region's most outspoken champions of the rights of black people. He was strongly in favor of the cause of equal rights for blacks, asking for the repeal of all the Black Laws and the securing of the right of trial by jury for the alleged fugitives. In 1839, all antislavery Senate Whigs, led by Wade, tried to prevent passage of a fugitive slave bill for the more effective recapture and return of fugitive slaves, literally keeping the Senate in session all night, but to no avail.[72]

Ironically, the radicalization of fugitive slave debate by the militant abolitionists faced anti-abolitionist backlash against the advance of personal liberty politics. Even though the emergence of militant abolitionism radicalized the legal and political debate regarding the reclamation of fugitive slaves by casting deep doubt on the constitutionality of the federal Fugitive Slave Law of 1793 and by insisting on the need for stronger legal safeguards for the protection of the alleged fugitive slaves, the appearance of anti-abolitionism made the Ohio legislature sharply retreat from the past moderate but advanced fugitive slave policy holding the slavecatchers in check. The general political climate of the Ohio legislature became conservative or even sharply reactionary, and the state of Ohio had retrogressed completely on the subject of fugitive slaves by the end of the 1830s.

The formal reports of the state legislatures regarding the consistent petitions of abolitionists for the reinforcement of personal liberty politics symbolized its decline. As organized abolitionism took its roots, Ohio abolitionists launched their petition campaign for the repeal of the Black Laws and the security of new legal safeguards for blacks. In response to

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[72] Ohio *Senate Journal: The 36th General Assembly*, December 29, 1837, January 15, 20, 1838; Ohio *Senate Journal: The 37th General Assembly*, January 4, 5, 10, 19, February 14, 21, 23, 1839; Ohio *House Journal: The 37th General Assembly*, December 24, 1838, January 15, 30, February 11, March 23, 1839; *Ashtabula Sentinel*, January 13, 20, 27, March 24,1838, January 5, 19, 26, February 19, 23, March 2, 23, June 15, 1839; *The Philanthropist*, January 22, February 12, March 12, 1839.

these abolitionist requests, the legislature illuminated took its position. The Report of the Judiciary Committee on the subject of fugitives from justice in the 35th General Assembly and two contradictory reports of the 36th General Assembly clearly signaled the retreat of the state fugitive slave policy in favor of fugitive slaves despite the existence of racially discriminatory laws – a series of Black Laws – through the first three decades of the nineteenth century. First, on January 10, 1837, the Standing Committee on the Judiciary, to which was referred the memorials of citizens of Clermont County, asking the legislature "to take under consideration, the subject regulating in a more just and effectual manner, the proof and trial in cases of fugitive slaves," presented a negative report on the petitions of the citizens of the Clermont County, denying the need of additional legal apparatus such as the right of appeal to the higher courts for the more effective protection of the personal liberty of the alleged fugitive slaves.[73] In their memorial, pointing out that the enforcement of the federal Fugitive Slave Law of 1793 was "a source of indescribable mental and physical suffering, to its immediate victims, and of painful sympathy and regret, to the humane and patriotic citizen, who may be compelled to witness the spectacle," the petitioners argued that a warrant of a single justice of the peace might relegate the alleged slave to "interminable slavery" even though the decision might have been influenced "by interest, by ignorance, partiality, or prejudice." In order to prevent this absurdity, the petitioners called on the right of appeal, that is, the benefit of higher courts. They also stressed the "importance of taking out of the hands of Justices of the peace, and city Magistrates, the ability to execute a power great, and one so liable to be abused and perverted to the worst of purposes, and the placing it in the hands of our higher judicial officers." In short, the abolitionists

[73] Ohio *Senate Journal: The 35th General Assembly*, January 10, 1837; *The Philanthropist*, February 24, 1837.

In replying to the petitions, the Judiciary Committee agreed that slavery was a great evil. But it went on to point out that the Constitution as a result of compromise recognized the existence of slavery and the relation of master and servant, and that the slaveholding states would not have consented to the adoption of the Constitution without a provision authorizing them to reclaim their slaves. Therefore, without regard to individual opinions on slavery and the fugitive slave issue, it argued, every citizen should respect the constitutional rights of the slaveholders in the South. Subsequently, the Judiciary Committee claimed that because the federal Fugitive Slave Law of 1793 was made in pursuance of the Constitution, it should be considered definitely constitutional, and, as a consequence, the judicial right of the justice of the peace was constitutional. According to the Committee, such state officers might decline the exercise of the judicial right at their discretion or the state might by legislative enactment prohibit its exercise. However, those actions would be "unwise, uncourteous [*sic*], and impolitic [*sic*]" because it would produce unnecessary conflicts between the federal and state governments. Further, the attempt of the state legislature to confer the right of appeal would be deemed "improper, and, therefore, unwise and inexpedient." In the opinion of the Committee, for now, the Ohio anti-kidnapping law would be sufficient to prevent kidnapping by "evil disposed persons."[74]

Secondly, two contradictory reports of the 36th General Assembly exactly described how the nature and direction of the debate regarding fugitive slave question would develop and distort in the intensification of antislavery politics. They further revealed the fact that the matter of personal liberty politics would dominate the battle line of Ohio antislavery movement. In 1838, the Judiciary Committee responded to the pressure for the passage of a jury trial law for the

[74] Report of the Standing Committee on the Judiciary, to which was referred the memorial of sundry citizens of the county of Clermont, praying the Legislature "to take under consideration, the subject of regulating in a more just and effectual manner, the proof and trial in cases of fugitive slaves." Ohio *Senate Journal: The 35th General Assembly*, January 10, 1837.

alleged fugitive slaves. Considering the negative response of the previous legislature to asking for the expansion of fugitive slaves' civil rights, it was predictable that the report of the Judiciary Committee was no more than a reproduction of the conservative stance of the previous state legislature favoring federal fugitive slave legislation. This time, after confirming first that the petition was a design of Ohio abolitionists with "the spirit of negro emancipation that now agitates the country," the Judiciary Committee wanted to clarify its anti-abolitionist position lest abolitionists should call into question "the summary mode of proceedings" in the fugitive slave cases. First, the Committee asserted that if the Constitutional Convention had intended the extension of the right of trial by jury, it would not have left the intention in doubt, and that the adoption of the language, "*Shall be delivered up on claim,*" excluded such an inference. Second, even though the clause of the constitution of Ohio about the right of trial by jury would embrace the fugitive slave cases, it argued, such clause must not be construed so as to infringe upon the provisions of the Constitution of the United States, the "paramount and binding authority."[75] Third, the Judiciary Committee reiterated that without the fugitive slave clause the Constitution could not have been adopted. Congress, it believed, had the power, "by necessary implication," to legislate in order to fulfill the obligation of returning fugitive slaves, even if there was no express grant of legislative power to be conferred upon Congress by the Constitution. Lastly, the Committee concluded that the legislature had no right to pronounce a law of Congress unconstitutional. "Constitutionality" was a judicial question beyond the authority of the legislature.[76] In short, the Judiciary Committee made its judgment on the fugitive slave problem,

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[75] "That the right of trial by jury shall be inviolate." Article 8, Section 8 of the Constitution of the State of Ohio, 1802, <http://www.ohiohistory.org/onlinedoc/ohgovernment/constitution/cnst1802.html>

[76] Report of the Standing Committee on the Judiciary, to which was referred sundry petitions of citizens of Ohio, praying that the right of trial by jury may be extended to every human being in

resolving that it would follow the pro-southern principle of the presumption of slavery and the fugitive slave as a property in the Constitution.

On the other hand, the report of the Select Committee, which was made by Leicester King, faithfully followed the Birney-Chase arguments set out in the *Matilda* case. The right of trial by jury and the benefit of the writ of *habeas corpus*, read the report, were extended to all persons, whether citizens or aliens. In particular, the right of trial by jury was distinctly recognized and established three times in the state constitution without making any personal discrimination. In short, the grant of the jury trial right was also a judicial question, not a matter for legislative judgment. "The important principle involved in this law," according to it, "is not, whether slaves should, or should not, be claimed; it is, whether freemen should be liable to be seized in this lawless manner, and consigned to perpetual bondage." In addition to reporting a bill prescribing the mode of proceedings in all cases arising under the fugitive slave clause of the Constitution (Senate Bill No. 158), the Committee recommended passage of the bill now pending in the legislature, repealing the testimony law, and at the same time reported two resolutions. The first resolution proclaimed that the federal and state guarantees of security from unwarrantable and unreasonable seizure, the right of jury trial, and the writ of *habeas corpus* were applicable to all persons. In an effort to reaffirm that the first resolution was directly relevant to all fugitive slave cases, the second declared that "in the administration of justice, and in the protection of these natural and constitutional rights, the same rules and principles of law should be extended to all persons, irrespective of color, rank or condition."[77] However, neither

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the State. Ohio *Senate Journal: The 36th General Assembly*, January 31, 1838, 305-10; *The Philanthropist*, March 20, 1838.

[77] Report of the Select Committee to which was referred the numerous petitions of the citizens of this State, asking the repeal of certain laws, imposing restrictions and disabilities upon persons of color, not found in the constitution, and which the petitioners aver to be contrary to its principles;

resolution was considered by the Senate, and passage of the bill repealing the testimony clause was thwarted. Discussion of the state fugitive slave bill was postponed until the next legislature.[78]

The dismal situation of the 35th and the 36th General Assemblies indicated the decline of the personal liberty politics of the last three decades of the nineteenth century and foreboded the intensification of antislavery politics for the revival of the personal liberty politics surrounding the fugitive slave question. During the first three decades of the nineteenth century, the politics of personal liberty prevailed in spite of the establishment of strong white supremacist policy. When militant abolitionism emerged in the early 1830s, however, radical abolitionists inadvertently triggered a unity of anti-abolitionists. As a central campaign, the radical abolitionists intended to radicalize the personal liberty politics by questioning the constitutionality of the federal Fugitive Slave Law. As a consequence, the counterattack of the anti-abolitionists on the abolitionists focused on the frustration of the personal liberty politics. It is noteworthy that the first, successful task of the political anti-abolitionists was the passage of the repressive Fugitive Slave Law. It is apparent that the anti-abolitionists realized, with the emergence of militant abolitionism, that they had been too negligent in supervising the development of the politics of personal liberty to make strained relations with the neighboring slaveholding states. In this respect, the rapid change of the fugitive slave policy of Ohio in the late 1830s was as much due to the anti-abolitionists' fear of personal liberty politics which had been persistently developed for the last thirty years as to their hostility to the militant abolitionism.

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and also praying that the right of trial by jury, may be secured to all persons within its jurisdiction. Ohio *Senate Journal: The 36th General Assembly*, March 3, 1838, 572-86.

[78] Ohio *Senate Journal: The 36th General Assembly*, March 17, 1838.

The adoption of the state Fugitive Slave Law in the next legislature clearly testified to the total collapse of the personal liberty politics of Ohio. The Democratic-controlled legislature was so single-mindedly proslavery that in 1839 they refused to reelect Thomas Morris as a Senator, who began to emerge as a radical antislavery politician in the national politics, and finally enacted the repressive Fugitive Slave Law, which Ohio abolitionists dubbed a "bill of abominations," in collusion with the conservative Whigs. The repeal of the Fugitive Slave Law of 1839 and the adoption of personal liberty laws would dominate the Ohio antislavery movement as major agendas for the next two decades. The next chapter deals with the adoption of the Ohio Fugitive Slave Law in the Democratic-controlled legislature as an embodiment of political anti-abolitionism.

Chapter Two

"Bill of Abominations":

The Ohio Fugitive Slave Law of 1839 and Retrogression of the State Fugitive Slave Policy.

In the antebellum period, the Northern states developed a legislative policy and judicial tendency which intended to interfere with the administration of the national Fugitive Slave Law of 1793. This interference on the part of the free states engendered an unwanted sense of antagonism between the national government and state governments. It had become prominent enough by 1850 to inspire Congress to adopt the more stringent fugitive slave law demanded by slaveholders, which posed a direct threat to the civil liberties and privileges of the Northerners. But this was not the whole picture, at least before the intensification of sectional antagonism during the 1850s.

Rather than undermining intentionally the pro-Southern federal policy on fugitive slaves, the state governments and the judiciary in the North were very enthusiastic about supporting the national fugitive legislation and cooperating with the federal government. In some cases, furthermore, the state legislatures of the North passed their own fugitive slave laws under the pretence of favoring cooperation with the national Fugitive Slave Law and then took advantage of them as effective tools for oppressing the abolitionist movement. Originally, state fugitive slave laws, as a measure of cooperation with the national Fugitive Slave Law of 1793, were intended to set up the machinery for the recapture and rendition of runaway slaves.[1] As the

[1] The Ohio Black Laws of 1804 and 1807 are typical examples of the state fugitive slave law that was designed to supplement the national fugitive law. Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio* (Athens, Ohio: Ohio University Press, 2005). Also, the Indiana fugitive slave law of 1824 was created in order to set up some legal procedures of the recapture and rendition for fugitive slaves. On the history of fugitive slave laws of Indiana and the meaning of the Indiana statute of 1824, see William R. Leslie, "The Constitutional

abolitionist movement began to emerge, however, proslavery advocates in the North sought to employ the fugitive slave law as an important anti-abolitionism instrument.

Especially, this was the case for the Ohio Fugitive Slave Law of 1839. Ohio's Fugitive Slave Law was ostensibly designed to accomplish the same purpose some years before the enactment of the national Fugitive Slave Law of 1850, which aroused a storm of opposition throughout the North: the passage of a more stringent, effective, and enforceable law for reclaiming fugitive slaves. Compared to the national Fugitive Slave Law of 1793[2] which made the arrest of a fugitive slave a private affair, the Ohio Fugitive Slave Law provided a more thorough and perfect example of fugitive slave legislation which had long been desired in that it guaranteed not only strong state participation in the arrest process but also punishment for aiding and abetting the escape of slaves. Furthermore, while the national Fugitive Slave Law of 1850 was launched as a counterattack to the Northern "personal liberty laws," the Ohio Fugitive Slave Law was essentially designed as a way of carrying out a preemptive strike against the antislavery movement in Ohio, which had become more emergent, to say nothing of guaranteeing a secure and effective reclamation of runaway slaves. Through the enactment of the fugitive slave law, the proslavery advocates and conservatives in the legislature wanted to strike a fatal blow at abolitionists who took advantage of every opportunity to declaim against the institution of slavery.

Significance of Indiana's Statute of 1824 on Fugitive from Labor," *Journal of Southern History* 13, no. 3 (August 1947): 338-53.

[2] An Act respecting fugitives from justice, and persons escaping from the service of their masters (Fugitive Slave Act), I Stat. 302 (1793).

Much thoughtful work has been done on the national Fugitive Slave Law of 1850 as part of the Compromise of 1850 and its political impact on the national crisis in the 1850s.[3] But, strangely enough, the study on the Ohio Fugitive Slave Law has been neglected, in spite of the fact that it was enacted by the Ohio legislature to accomplish the same purpose of the federal Fugitive Slave Law of 1850 at state level almost ten years earlier: the repression of the personal liberty politics. Many works on the antislavery movement of Ohio have just mentioned the adoption of the state Fugitive Slave Law or provided the brief account of it. Only historian C.B. Galbreath provided a brief introductory work on the state Fugitive Slave Law in a short article a great while ago.[4] Since then, very little research has been devoted specifically to the important legislative debates concerning the Fugitive Slave Law as a symbol of anti-abolitionism and the personal liberty measures to undermine it.

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[3] On the effective enforcement of the Fugitive Slave Law of 1850, see Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill: University of North Carolina Press, 1970) and Gerald G. Eggert, "The Impact of the Fugitive Slave Law on Harrisburg: A Case Study," *Pennsylvania Magazine of History and Biography* 109, no. 4 (October 1985): 537-69. On the impact of the law on black people, see James Oliver Horton and Lois E. Horton, "A Federal Assault: African Americans and the Impact of the Fugitive Slave Law of 1850," in *Slavery and the Law*, ed. Paul Finkelman (Madison, WI: Madison House, 1997), 143-60. Also, for a broader political context and impact of the law, see Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, completed and edited by Ward McAfee (Oxford: Oxford University Press, 2001). Albert J. von Frank's work is of interest, too, in that he gives much more credit to the resistance to Fugitive Slave Act of 1850 than to the Kansas-Nebraska outrage in creating a revolutionary antislavery sentiment and in developing the rhetoric and strategy of political antislavery, at least in Massachusetts. von Frank, *The Trials of Anthony Burns: Freedom and Slavery in Emerson's Boston* (Cambridge, Massachusetts and London, England: Harvard University Press, 1998). Intriguing was H. Robert Baker's interpretation that the resistance to the Fugitive Slave Law of 1850 was well construed in terms of popular constitutionalism which treats "popular action as the best safeguard for constitutional rights." Baker, *The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War* (Athens, Ohio: Ohio University Press, 2006), 167.

[4] Charles B. Galbreath, "Ohio's Fugitive Slave Law," *Ohio Archaeological and Historical Quarterly* 34 (April 1925): 216-40.

Indeed, the adoption of the Ohio Fugitive Slave Law marked a turning point in the antislavery politics of Ohio. The Ohio Fugitive Slave Law provides a deep insight into the emergence of political anti-abolitionism, the initiation of a more militant antislavery movement, and the direction of antislavery politics, in Ohio. First, the Ohio Fugitive Slave Law was the culmination of political anti-abolitionism, which had emerged in the mid-1830. During the first three decades of the nineteenth century, the politics of personal liberty, which was favorable to fugitive slaves, prevailed in spite of the establishment of strong white supremacist policy. However, the emergence of militant abolitionism and the demand of stronger measures for the protection of personal liberty of blacks by the Ohio abolitionists backfired. In an effort to suppress abolitionists, political anti-abolitionists in the legislature began to take a quick legislative action to advance proslavery state fugitive slave policy in favor of slaveholders. Ohio legislature's move into the establishment of proslavery fugitive slave policy was manifested in the adoption of negative reports in the 35th and 36th General Assemblies, which repudiated the need of more effectual legal safeguards for personal liberty of blacks and reaffirmed the constitutionality of the federal Fugitive Slave Law of 1793, and culminated in the enactment of the Fugitive Slave Law in 1839.[5]

Secondly, the adoption of the state Fugitive Slave Law provoked militant abolitionist resistance. As the federal Fugitive Slave Law of 1850 triggered anger and outrage among the Northerners, so the state Fugitive Slave Law of 1839 aroused the ire of Ohioans. Lots of protest

[5] Report of the Standing Committee on the Judiciary, to which was referred the memorial of sundry citizens of the county of Clermont, praying the Legislature "to take under consideration, the subject of regulating in a more just and effectual manner, the proof and trial in cases of fugitive slaves." Ohio *Senate Journal: The 35th General Assembly*, January 10, 1837; Report of the Standing Committee on the Judiciary, to which was referred sundry petitions of citizens of Ohio, praying that the right of trial by jury may be extended to every human being in the State. Ohio *Senate Journal: The 36th General Assembly*, January 31, 1838.

meetings were organized, and many antislavery advocates and even some Democrats expressed their discontent and frustration. In particular, Ohio abolitionists regarded the adoption of the Fugitive Slave Law as the establishment of "a *quasi* slavery in Ohio" (*italics* in original) and as "an insult to [Ohio's] free institutions," and described it as "base bowing to the dark spirit of slavery," in the emphatic language of Pennsylvania Governor Joseph Ritner.[6] The 1839 Fugitive Slave Law gave abolitionists a political rallying point for a more militant antislavery movement, and their political campaign to repeal it would dominate the antislavery movement of Ohio in the 1840s.

Thirdly, the passage of the state Fugitive Slave Law defined the direction of Ohio's antislavery politics. It has two implications. First, Ohio abolitionists mobilized themselves to persistently advance the personal liberty politics in the middle of the emergence of political antislavery in the 1840s. Rather than sacrificing their slave-centered abolitionism for the political abolitionism focusing on the restriction of slavery, Ohio abolitionists pushed vigorously forward with the antislavery campaign to adopt personal liberty laws through the 1840s and the 1850s, even after the repeal of the state Fugitive Slave Law in 1843. In Ohio, political abolitionists, as well as non-political abolitionists, assigned strategic priority to the adoption of personal liberty laws, and strove to challenge and undermine the established constitutional and political systems by revitalizing the issues of fugitive slaves and personal liberty laws.

The second political implication regarding the direction of Ohio's antislavery politics was that the adoption of the state Fugitive Slave Law clarified the need for independent political action by abolitionists. Politically-minded abolitionists relied on Whigs instead of forming their own party, because of the Whigs' antislavery position. However, when the Whigs disappointed

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[6] *The Philanthropist*, November 12, 1839; Francis Preston Blair, ed., *The Extra Globe, containing political discussions, documentary proofs, &c for 1838* (Washington: Globe Office, 1838), 388.

them by colluding with the Democrats in the passage of the Fugitive Slave Law, the abolitionists cast a deep doubt on the veracity of their antislaveryism, which would seriously injure the relationship between abolitionists and Whigs. As a consequence, abolitionists would organize their own political party for the establishment of personal liberty politics, alienating the Whigs.

To examine all implications of the 1839 Fugitive Slave Law in one chapter is a difficult enough task. The impact of its adoption on the antislavery movement in Ohio would be dealt with in the next chapter. This chapter sheds new light on the Ohio Fugitive Slave Law of 1839 as the product of political anti-abolitionism in Ohio, not just as an ancillary legal measure to the national Fugitive Slave Law of 1793. First of all, it examines the disastrous fall election of 1838 which enabled the formation of the anti-abolitionist Democratic legislature. It then explores a series of anti-abolitionist measures and the legislative debates on them in the 37th Ohio General Assembly, which culminated in the passage of the Fugitive Slave Law, and the failed attempts of the antislavery Whig dissidents to reject the anti-abolitionist legislation. In so doing, it argues that the state Fugitive Slave Law was essentially designed as a preemptive attack on abolitionism and contributed to the radicalization of antislavery politics in Ohio. It also claims that the Ohio Fugitive Slave Law laid the groundwork for the development of the antislavery legal principles that formed the basis for personal liberty laws.

By highlighting the Fugitive Slave Law of 1839, this chapter aims to illuminate the establishment of the proslavery fugitive slave policy of Ohio and the development of antislavery ideas about what form of legal protections was necessary for the personal liberty of blacks. In the process, it examines the emergence of political anti-abolitionism and the burgeoning conflicts between abolitionists and the Whig party.

The fugitive slave issue strained relations between Ohio and its bordering slave states for several decades. Kentucky state officials and slaveholders accused the Ohio government of endangering the harmonious relationship with the slaveholding states by neglecting to enforce the national Fugitive Slave Law. As early as 1822, the Kentucky legislature had expressed serious doubts about the runaway slave policy of the Ohio legislature, and invited it to a conference, along with delegates from Illinois and Indiana, to discuss the problem of fugitive slaves. In an effort to aid the South (particularly the State of Kentucky) in recapturing its fugitive slaves, the Ohio legislature adopted a resolution on January 27, 1823, urging the Ohio governor to appoint two commissioners to consult on the runaway slave matter.[7] However, this did not produce the serious fugitive slave measures that the Kentucky legislature desired for the protection of slaveholders' property right in fugitive slaves. Sixteen more years of strained relations between the two states elapsed before the Ohio legislature adopted a comprehensive and oppressive state fugitive slave law in 1839.

The complaints of the Kentucky legislature became more vocal as militant abolitionism began supplanting the moderate antislavery doctrine in Ohio during the 1830s, with the new principle of immediate abolition of slavery and the purpose of elevating blacks instead of colonizing them in Africa. Ohio abolitionists insisted on personal liberty and civil liberties for blacks. In addition, they were more aggressive in aiding fugitive slaves and in resisting enforcement of the national Fugitive Slave Law, as shown by the activities of the "Underground Railroad." This abolitionist network for the surreptitious transportation of runaway slaves from

[7] Emmett D. Preston, "The Fugitive Slave Acts in Ohio," *The Journal of Negro History* 28, no. 4 (October 1943): 426.

the South to freedom in Canada directed thousands of fugitive slaves traveling in Ohio.[8] Furthermore, Ohio abolitionists were very enthusiastic about exposing kidnapping cases and the rank absurdity of the illegal arrest of, the secret proceedings concerning, and court hearings without counsel, testimony, and jury trial for, alleged fugitive slaves. It came, therefore, as no surprise that abolitionists began to demand jury trial for everyone claimed as a fugitive slave, not just for those who claimed they were free.[9] Pleading for a jury trial law, Bailey wrote in the Cincinnati *Philanthropist* that "A privilege thus highly valued should not be partial in its application, in a state claiming to be among the most free. It should be extended to all alike, to the poor as well as to the rich, to the weak, as well as to the powerful."[10]

It is no wonder that abolitionists' increasing pressure for stronger protection for blacks against illegal kidnapping and enslavement created feelings of insecurity among slaveholders in neighboring Kentucky about the safety of their human property. Their fears were aggravated in September, 1838, when Reverend John B. Mahan, minister of the Methodist Episcopal Church in Sardinia, Ohio, was indicted for aiding fifteen slaves to escape through Ohio to Canada. Although Reverend Mahan was extradited upon the demand of the Governor James Clark of Kentucky under the federal Fugitive Slave Law, he had to be released on a technicality. When Reverend Mahan stood trial in the Mason Circuit Court of Kentucky, he was accused of, in the

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[8] Larry Gara, *Liberty Line: The Legend of the Underground Railroad* (Lexington: University of Kentucky Press, 1967); Robin W. Winks, "The Canadian Negro: A Historical Assessment – Part I: The Negro in the Canadian-American Relationship," *Journal of Negro History* 53, no. 4 (October 1968): 283-300; William Renwick Riddell, "The Slave in Upper Canada," *Journal of Negro History* 5, no. 3 (July 1920): 340-58.

[9] In the North, New Jersey was the first state providing a jury trial for alleged fugitive slaves in the personal liberty law of 1837. For more information, see Paul Finkelman, "Chief Justice Hornblower of New Jersey and the Fugitive Slave Law of 1793," in *Slavery and the Law*, ed. Paul Finkelman (Madison: Madison House, 1997), 113-41.

[10] *The Philanthropist*, January 27, 1837.

indictment, aiding and assisting a slave named John to make his escape from his owner, William Greathouse. However, it became evident that Reverend Mahan had not been in Kentucky for many years, so he could not be in violation of Kentucky laws. Judge Joseph B. Reid illuminated this point in his opinion that the prisoner had not violated the criminal of law of Kentucky and the jury had no jurisdiction in the Mahan case, unless he aided personally in the escape of the fugitive slave from Kentucky, or was "near enough to receive information *personally*, and give aid and assistance in case of alarm or danger at the time the offence was committed" (*italics* in original). Even if Reverend Mahan played a role in this escape in other states as an "accessory," not as a "principal," Judge Reid added, he must be tried where he became an "accessory." The grand jury agreed with Judge Reid's opinion and the minister was acquitted and released in November, 1838.[11]

The Mahan affair of 1838 aroused considerable apprehension and dissatisfaction among slaveholders in Kentucky as to relations with Ohio concerning slave property. Unable to obtain better Congressional legislation on reclaiming runaways since the last aborted attempt to revise the national Fugitive Slave Law of 1793 in 1822, Kentucky's legislature decided to negotiate directly with Ohio authorities.[12] Accordingly, on January, 4, 1839, the Kentucky legislature passed a resolution, titled "Respecting the Enticing Away the Slaves of the Citizens of Kentucky, by the Citizens of Other States." In the resolution, the Kentucky legislature made clear its

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[11] *Ohio State Journal*, October 31, November 28, 1838; *Niles' National Register*, December 1, 1838; John B. Mahan, defendant, *Trial of Rev. Jon B. Mahan, for felony: in the Mason Circuit Court of Kentucky, commencing on Tuesday, the 13th, and terminating on Monday the 19th of November, 1838/ reported by Joseph B. Reid and Henry R. Reeder* (Cincinnati: Samuel A. Alley, printer, 1838), 79-84.

[12] On the congressional attempts to revise the federal Fugitive Slave Law of 1793, see Leslie, "The Pennsylvania Fugitive Slave Act of 1826," 430-35; Carol Wilson, *Freedom at Risk: The Kidnapping of Free Blacks in America, 1780-1865* (Lexington, Kentucky: The University Press of Kentucky, 1994), 109.

legislative intention of securing the passage of a law to prevent Ohio abolitionists from "enticing away the slaves of citizens of Kentucky" or "aiding and assisting, or concealing them" in Ohio territory. Also, they intended to acquire a more desirable fugitive slave act "providing more efficient and certain means for recapturing and bringing away absconding slaves, by their masters or legally authorized agents." Right after passage of the resolution, the Kentucky legislature elected and dispatched two bipartisan commissioners, ex-Governor James T. Morehead and John Speed Smith, to Columbus, Ohio, in order to negotiate with Ohio on the problem of fugitive slaves. Being sympathetic with Kentucky's complaints, Ohio Governor Wilson Shannon submitted a communication from them as part of a special message to the legislature, calling upon lawmakers to take substantial actions for them.[13] The response of the Ohio legislature was not different from that of the Governor. The cordiality with which Ohio received the Kentucky commissioners suggested that new fugitive slave legislation would be forthcoming which would prevent the escape, secreting, and abduction of the slaves of the Kentuckians more effectually.

The Mahan affair also brought about another unheralded consequence for Ohio's abolitionists in that the affair transformed the political terrain in the election of 1838, resulting in the formation of the Democratic legislature that would create the repressive fugitive slave law. The Mahan affair did not cause apprehension and dissatisfaction only among Kentucky slaveholders. It also evoked much discontent and frustration among abolitionists in Ohio. Whig Governor Joseph Vance arrested Mahan and extradited him to the Kentucky authorities for trial in Kentucky at the behest of Kentucky Governor Clark, a decision that proved costly to Vance

[13] Galbreath, "Ohio's Fugitive Slave Law," 217, 222-24; Francis P. Weisenburger, *The Passing of the Frontier, 1825-1850*, vol. 3 of *The History of the State of Ohio*, 6 vols. ed. Carl Wittke (Columbus, Ohio: Ohio State Archaeological and Historical Society, 1941), 3:381.

and his party. Abolitionist editor Bailey, who eventually emerged as one of the major spokesmen of the antislavery movement in nation, as well as in Ohio, exploited the issue of Reverend Mahan's extradition to Kentucky to brand the Whig Party as a puppet of slaveholders. Almost on the eve of the state election of 1838, Bailey circulated extra copies of the *Philanthropist* with leading Ohio Democratic papers to publicize the apparent surrendering of state sovereignty and personal liberty to the demands of Kentucky slaveholders. This tactic contributed to the Democratic sweep of the governorship and both houses of the state legislature.[14] Bailey and most Eastern abolitionist presses gave full credit for the Democratic victory to the antislavery vote. Even Whig papers asserted it as an undeniable fact. In analyzing the election, one Whig editor wrote that "That party [abolitionists] at this time holds the balance of power in a number of counties of the State, sufficient to decide the party complexion of the Legislature." Emphasizing "the desirable influence of Abolitionists," Bailey also wrote to James G. Birney that "Ohio abolitionists know how to *vote* (*italics* in original)…and preached a sermon to politicians that will never be forgotten. I do believe we have done better so far as political action is concerned than any state…Our cause never stood so high before, by a great deal."[15] The abolitionists, whose motivations for this action were complex, failed to foresee the outcome of this election in the next legislature. While they wanted to rebuke the Whigs for their conservative and even pro-Southern attitude, the abolitionists also imagined that the Democrats

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[14] Stanley Harrold, *Gamaliel Bailey and Antislavery Union* (Kent, Ohio: The Kent State University Press, 1986), 28-29.

[15] *Journal and Register*, October 17, 24, 1838; *Ohio Statesman*, October 10, 1838; Gamaliel Bailey to Birney, October 28, 1838, in *Letters of James Gillespie Birney, 1831-1857*, 2 vols., ed. Dwight L. Dumond (New York: Appleton-Century, 1938), 1: 473.

would reward them by ensuring the re-election of antislavery Democratic Senator Thomas Morris.[16]

Actually, Ohio abolitionists' breakaway from the Whigs in the fall election of 1838 was neither abrupt nor unexpected. Although the Whigs had been more sympathetic to the abolitionist cause than the Democrats, the abolitionists' support for the Whigs was not absolute, nor unconditional. The purpose of the Ohio abolitionists was to influence either the Whigs or the Democrats to adopt antislavery principles. At a meeting of the Anti-Slavery Societies of Belmont County held in September, 1837, the committee on political action produced several resolutions, one of which declared that "slavery is authorized by law and must be abolished by legislative enactment. Therefore, the friends of liberty should support candidates favorable to the cause, *without regard to mere party names and distinctions*" (*italics* in original). In order to make this resolution effectual, the Belmont County abolitionists decided to interrogate every candidate for public office in that county, and vote only for those who agreed with their principles.[17] While Ohio abolitionists were still strongly opposed to the organization of an independent abolitionist party, they asserted that they needed to exert direct influence on candidates through their voting rights. As showed in resolutions of the Geauga County Anti-Slavery Society, in their meeting held on September, 1837, the Geauga County abolitionists also would "never countenance the organization of Abolitionists into a distinct political party." Instead, they would give their full support to a candidate who would "use the influence of his station according to his honest convictions and best judgment to procure the repeal of the unjust

[16] Theodore Clarke Smith, *The Liberty and Free Soil Parties in the Northwest* (New York: Longman, Greens, and Co., 1897), 30.

[17] *The Philanthropist*, October 6, 1837. One of the resolutions also says that "it would be a great folly to vote for candidates, that we know will not hear petitions." William Goodell also contended that because slavery was established by law, "the abolition of slavery is nothing more nor less than the repeal of these slave laws." *The Philanthropist*, September 25, 1838.

laws against colored people enacted by the Legislature of Ohio, and also the abolition of slavery in the District of Columbia and Territories, and the slave trade between the several States." For the advancement of this purpose, they "abjure all party connections and attachments."[18]

In fact, abolitionists appealed for independent political action, but they were not committed to a separate political organization. In Ohio, this appeared first in the political campaign of abolitionist James G. Birney, in which he warned, on September 23, 1836, that "If abolitionists unite themselves to either of the existing parties they will weaken their influence in the great revolution that has begun…In all the elections the safest rule would be to vote for those who are honest and capable and who show the most independent and unwavering regard for our laws and common liberties."[19] But, it is doubtful that Birney's leadership was already established at that time and that the political power of abolitionists grew enough to affect the result of some elections. However, it seems that at least by 1837, Ohio abolitionists had a firm belief in their political influence. On September, 1837, at the annual meeting of the Geauga County Anti-Slavery Society, the Geauga abolitionists exhibited a strong sense that they held "the balance of power between the present organized political factions in the non-slaveholding States."[20] As shown in resolutions of the Ohio Anti-Slavery Society, since Ohio's abolitionist movement had become by the late 1830s, mature and powerful enough, with sufficient balancing power to consider crossing party lines and supporting any political group for their abolitionist cause, it was not surprising that Ohio abolitionists would choose to pursue a more aggressive

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[18] *The Philanthropist*, October 13, 1837.

[19] William Birney, *James G. Birney and His Times: The Genesis of the Republican Party, with Some Account of Abolition Movements in the South before 1828* (New York: D. Appleton and Company, 1890), 232; *The Philanthropist*, October 28, 1836.

[20] *The Philanthropist*, October 13, 1837.

political strategy and that they might break away from the Whig Party if the Whigs failed to suggest more advanced antislavery measures.

This was exactly what occurred in the fall election of 1838. The Whig Governor and Whig Party provided a decisive excuse for the Ohio abolitionists' desertion from them, first, by arresting Reverend Mahan and extraditing him to Kentucky for aiding fugitive slaves. In addition, Ohio abolitionists desired to ensure the re-election of Democratic Senator Thomas Morris, because Senator Morris had emerged as a powerful antislavery spokesman in the United States Senate. As early as 1836, Senator Morris came out as an antagonist of the South in the debate on the Calhoun bill to exclude incendiary publications from the United States mail. Through his antislavery agitations in the Senate and his experience with anti-abolition mobs in Ohio, Morris formulated and popularized the concept of the Slave Power and its conspiratorial nature, alerting the nation to the ominous threat posed by the Slave Power. In hopes to aid the re-election of Senator Morris, many abolitionists crossed party lines in 1838 and supported Democratic candidates.[21]

In addition, and aside from the Mahan case, in the eyes of Ohio abolitionists, Governor Vance and other Whig candidates were not very different from the Democratic candidates in that they declined to answer questions about their stand on the repeal of the Black Laws and on other matters of abolitionist concern. It was apparent to the abolitionists that Vance and Whig lawmakers would fail to support overdue antislavery reforms and other important antislavery

[21] The ardent hope for the re-election of Senator Thomas Morris had been built up earlier. The Green Plain Anti-Slavery Society adopted resolutions defending the rights of petition against the aggression of the proslavery group including John C. Calhoun. Green Plain abolitionists gave firm support to Morris and did not hide the expectation of his re-election in the resolution. "*Resolved,* That we highly esteem Thomas Morris, our dignified Senator in Congress, for maintaining the right of petition, and evincing an uncompromising opposition to Calhoun's string of pro-slavery abstractions, amidst the obloquy and reproach with which he was assailed – and we are animated with the hope that he will be sustain by his constituents." *The Philanthropist*, March 27, 1838.

agendas, such as the universal right of trial by jury, the repeal of the Black Laws, opposition to the annexation of Texas, the abolition of slavery in the District of Columbia, or the prohibition of the slave trade between the states. Therefore, Ohio abolitionist voters felt they needed to more clearly show the Whig Party what they wanted and what they could do in the political arena. As a result, many abolitionists and antislavery Whigs boycotted the fall election, which benefited the Democrats. Some abolitionist voters supported the Democratic ticket such as James Welch of Stark County and Thomas Patterson of Clinton County, who had indicated a willingness to repeal the state's Black Laws, to grant the alleged fugitive slaves the right of trial by jury, and, most of all, to favor the re-election of Senator Thomas Morris.[22] The election demonstrated that the Whig Party would continue to lose ground if they remained hostile to, or lukewarm towards, antislavery proponents.[23]

The abolitionist factor was decisive in the huge success of the Democrats in the election of 1838.[24] As a result of this election, the Whig majority vanished and the Ohio Democrats

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[22] The antislavery editor Gamaliel Bailey denounced James Welch for his false oath in the interrogatory that abolitionists sent to him before the fall election. Welch answered in the affirmative to all questions about the repeal of the Black Laws, the trial by jury in the fugitive slave case, and the re-election of Thomas Morris. But after being elected as a Representative he supported none of them in the end. On the same date of this paper, the Clinton County Anti-Slavery Society criticized Democratic Representative Thomas Patterson for his vote on the Fugitive Slave Law. At a meeting of the Society held in Wilmington, March 1, 1839, the Clinton abolitionists adopted a resolution that their Representative Patterson was "unworthy the support of the conscientious voters" because he voted on the "Black Bill" and "swerved from the principle he professed before his election." *The Philanthropist*, March 26, 1839.

[23] Richard H. Sewell, *Ballots for Freedom: Antislavery Politics in the United States, 1837-1860* (New York: Oxford University Press, 1976), 18-19; Smith, *Liberty and Free Soil Parties in the Northwest*, 30-31; John A. Neuenschwander, "Senator Thomas Morris: Antagonist of the South, 1836-1839," *Cincinnati Historical Society Bulletin* 32 (June 1974): 123-39; Jonathan H. Earle, *Jacksonian Antislavery and the Politics of Free Soil, 1824-1854* (Chapel Hill: University of North Carolina Press, 2004), 37-44; Weisenburger, *The Passing of the Frontier*, 378-79, 384-85.

[24] Of course, the antislavery factor did not provide the whole explanation for the success of the Democrats in the fall election. Vernon L. Volpe takes a critical stand against this historical

obtained the governorship as well as control of both houses of the new legislature, by a narrow margin.[25] Right after the election, Ohio abolitionists' prospect for the repeal of the Black Laws and the accomplishment of other antislavery agendas appeared to become brighter. From the perspective of the abolitionists, the election was a victory for them and they thought it was about time they transformed their dissent against Ohio's legislative policy on blacks and other slavery issues into concrete, effective antislavery legislation.

Abolitionists' optimism concerning the success of their antislavery agenda was not just due to the remarkable achievement of the 1838 election. Even though this significant victory in the election contributed much to the abolitionists' positive outlook on the expected success of their antislavery agenda, there was another element in this expectation of success. More than anything else, Ohio abolitionists' success in the 36th General Assembly was conducive to generating such a positive attitude in their antislavery endeavor. In spite of the fact that

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account stressing the decisive role of abolitionists. According to Volpe, historians have been too uncritical in accepting the claims of some Whigs that the abolitionists were primarily responsible for their defeat, citing an article in a major Democratic paper, the *Ohio Statesman,* denying the abolitionist factor. He put special emphasis on Whig lethargy and banking issues that favored the Democrats. Even though there are elements of truth in his contention, he tends to minimize the abolitionist influence. First of all, Whigs' complaints about the role of the abolitionists cannot be dismissed as mere political rhetoric by them in their looking for a scapegoat for their political failure. Most Whig press and leading Whig spokesmen produced a similar analysis for the result of the election that the defection of the abolitionists determined the fate of the Whigs. Because the abolitionists tended to be faithful supporters of the Whigs, the Whig Party could have realized the real impact of that defection more exactly and clearly. In addition, while general Whig supporters might have abandoned the Whigs on account of the banking issue, the abolitionists would have not broken away from them just for that reason alone, except for the abolitionism issue. Moreover, the claim of the Democratic *Ohio Statesman*, which Volpe cited, can be interpreted to mean that the Democrats might aim to deny any abolitionist influence or links in their victory. The considerable influence of Ohio abolitionists in the election is proved clearly in the next fall election in which the rage of the abolitionists over the passage of the state Fugitive Slave Law ruined completely almost the whole Whig ticket. Vernon L. Volpe, *Forlorn Hope of Freedom: The Liberty Party in the Old Northwest, 1838-1848* (Kent, Ohio: The Kent State University Press, 1990), 27-29.

[25] There were 17 Whigs and 19 Democrats in the Senate and 34 Whigs and 38 Democrats in the House. *Cincinnati Daily Gazette,* December 7, 1838.

abolitionists failed to repeal the notorious Black Laws or to acquire the right of jury trial for runaway slaves, they had multiplied their petitions for the abolition of the Black Laws, the extension of the right of jury trial, and opposition to the annexation of Texas. Also they petitioned repeatedly for special enactments against anti-abolition mobs, the discussion of abduction cases, blacks' testimony right, and gag resolution. The Whig legislature was relatively sincere in dealing with the petitions and memorials on these agitating topics, and Whig Senators Benjamin F. Wade and Leister King gave positive reports regarding important antislavery issues. Encouraged by these notable achievements, the Ohio abolitionists enunciated that their duty was to "exert their influence, and to bestow their votes, as to secure the election of men who will advocate the repeal of our obnoxious laws, and the extension of the jury-trial to all cases in which personal liberty is at stake…*intelligently, consistently, unitedly* (*italics* in original)." Through their success in the 36th General Assembly, abolitionists glimpsed the possibility that the State of Ohio might become the guarantor of freedom, rather than its enemy.[26]

When their successful antislavery campaigns in the previous legislature and the results of the election of 1838 were tested in the 1838-1839 session of the General Assembly, however, the triumphant abolitionists experienced nothing but perplexity and disillusionment. Although the Ohio abolitionists' positive attitude was not entirely unfounded, it turned out that their belief in the impending success of their antislavery programs was politically naïve and delusional. The newly formed Democratic legislature launched its anti-abolitionist attacks without the slightest hesitation.

Emboldened by their success in the election, from the beginning of the 37th General Assembly, the proslavery advocates in the legislature started to overturn the accumulated

[26] *Ashtabula Sentinel*, January 13, 20, 27, 1838; March 24, 1838; *The Philanthropist*, March 27, 1838.

antislavery achievements and to stymie reform efforts. Contrary to the wishes of the abolitionists, on December 21, 1838, Democratic legislators voted to replace Morris, the first "abolition Senator" of the United States, with Benjamin Tappan.[27] The ousting of Senator Morris from his Senate seat was not totally unpredictable, considering what Morris defined as the "great Anti-Abolition movements" which the proslavery advocates had started to launch in the arena of national politics.[28] After the election of Senator Tappan, one Whig editor criticized both the Southern proslavery advocates and the Ohio Democrats, maintaining that "Mr. Morris was a candidate for re-election. His defeat was DEMANDED by the South, and Northern dough-face consented to the sacrifice."[29]

The Slave Power and the northern Democrats often cooperated with each other and shared important perceptions, especially of anti-abolitionism. If the abolitionists had paid more

[27] *Journal of the Senate of the State of Ohio: The 37th General Assembly*, December 20, 1838. Although Senator Morris' political fate was already sealed at that moment when he had made an uncompromising stand against Calhoun's attempt to impose a gag rule on the Senate, his reply to a series of questions by a Democratic Committee of the Legislature of Ohio in the fall election provided more decisive and direct excuse for his replacement by the newly formed Democratic legislature. On the slavery question, he reaffirmed his strong abolitionist position, and left little room for the Democrats to reconsider his re-election, by saying that "*I am opposed to slavery in all its forms*; and against its further extension in our country; believing it to wrong in itself, and injurious to the best interests of the people…I hold that the citizens of each and every State, have an indisputable right to *speak, write, or print, on subject of slavery*…I believe it to be *the duty of the States as well as their interest, to abolish slavery where it does exist*…I also believe the African race, born in this country, or brought into it against their will, ought to be protected in, and enjoy their natural rights." Moreover, in relation to the issue of fugitive slaves, Morris did not hesitate to assert that the Fugitive Slave Law of 1793 was "unconstitutional, and in degradation of State sovereignty, and ought to be repealed." Considering these unequivocal and extreme abolitionist opinions, Morris' re-election by the Democrats was an unrealizable dream to abolitionists who had honored him. *Ohio Statesman*, November 9, 23, 30, 1838; *The Philanthropist*, January 1, 1839; B. F. Morris, ed., *The Life of Thomas Morris: Pioneer and Long a Legislator of Ohio, and U. S. Senator from 1833 to 1839* (Cincinnati: Moore, Wilstach, Keys & Overend, 1856), 189-203; Bertram Wyatt-Brown, *Lewis Tappan and the Evangelical War Against Slavery* (Cleveland: Press of Case Western Reserve University, 1969), 277.

[28] Morris, ed., *The Life of Thomas Morris*, 199.

[29] *Journal and Register*, December 21, 1838.

attention to the national efforts of the "Slave Power" to deal with the danger of abolitionist movement, they would have reconsidered the change in political strategy that ultimately resulted in the formation of the Democratic legislature in the end of the 1830s. There is no doubt about the existence of other political options for the abolitionists and antislavery Whigs in the election. By showing their entrenched unity and by proving their true power of political action, Ohio abolitionists could have given a significant warning to the Whig Party as to the possible results of their total abandonment, or at least willful neglect, of antislavery programs and reform measures. However, the Ohio abolitionists entirely failed to foresee the outcome of their political choice in the fall election, and the political consequences of their poor strategy would eventually prove to be both disastrous and ruinous.

The replacement of the abolitionist senator was followed by other severe anti-abolitionist attacks by the Democrats in the new legislature. On January, 1839, a series of state resolutions condemning abolitionism were passed, and in February, most humiliating and disgusting of all, the passage of the oppressive Fugitive Slave Law was secured at the request of the Kentucky legislature dispatching two commissioners to the Ohio legislature.

In the early days of the 1838-39 session, the antislavery House Whigs struggled to fight back against the anti-abolitionist attacks by the Democrats because many House Whigs had not hesitated to join the Democratic anti-abolitionist campaign. In the beginning of the session in December, in the House, first, the Standing Committee on the Judiciary, led by Democratic Representative P. P. Lowe of Montgomery, endeavored to nip in the bud all antislavery legislative efforts of any House Representatives. When Whig Representatives such as Oramel H. Fitch of Ashtabula County, Andrew Donally of Athens and Meigs Counties, and Democratic Representatives such as John E. Hanna of Morgan County, James Welch of Stark County,

Thomas Patterson of Highland County, and Isaac Smucker of Licking County presented memorials for the adoption of the right of jury trial to all, including fugitive slaves, for the repeal of the Black Laws, and, especially, for the repeal of an act concerning fugitives from justice, which was intended to prevent the recurrence of the Mahan case,[30] the Standing Committee on the Judiciary presented negative opinions, through two reports concerning the antislavery memorials, that it was inexpedient to take additional legislative action because the existing laws of the State relating to the antislavery petitions were sufficient enough. The Standing Committee on the Judiciary took advantage of its special authority for the suppression of antislavery petitions again in the closing days of the session by presenting negative reports on several antislavery memorials, and by later reporting on the notorious new fugitive slave bill at Kentucky's request.[31]

Second, the Democrats in the House aimed to crush the direct petitioning efforts of African Americans from the very beginning. On January 4, 1839, when Whig leader Moses B. Corwin of Champaign County submitted a repeal petition on behalf of disenfranchised blacks in his district contending that blacks ought to be treated as human beings and that the petition of the "humblest individual" of the State should be received, his involvement alarmed the conservative Democratic majority in the legislature, who argued that the petition was in no way entitled to consideration since blacks had no citizenship rights. Even though Corwin claimed that this demand for petitioning rights had nothing to with abolitionism, conservative Whig Representative James Hughes of Ross, Pike, and Jackson Counties replied that it was one of the "schemes of a band of white, lawless, lying desperados." Democratic Representative George H.

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[30] *Journal of the House of Representatives of the State of Ohio: The 37th General Assembly*, December 22, 24, 25, 26, 27, 1838.

[31] Ohio *House Journal: The 37th General Assembly*, December 3, 1838; *Journal and Register*, December 24, 1838, January 3, 1839; *Ashtabula Sentinel*, January 5, 1839.

Flood of Licking County agreed, urging the House to reject consideration of black petitioning rights. Although the House Representatives voted for the reception of the petition by a narrow margin, Flood succeeded in postponing Corwin's petition indefinitely.

On January 14, Whig Representative Leverette Johnson of Cuyahoga, from the abolitionist Western Reserve submitted another petition from blacks for the repeal of the law imposing civil disabilities on them and particularly of the section of the statute prohibiting them from testifying in courts of justice. Again, Democratic Representative Flood urged the House to reject every petition submitted by black people, arguing that Ohio law did not give blacks a right of petition. This time, Democratic leader and House Speaker James J. Faran of Hamilton County joined to support Flood, claiming that blacks had no constitutional right to petition the legislature because the Constitution was made neither by nor for them. According to Faran, the Constitution was intended for white men alone. This being the state of the case, Faran said, he could not understand how blacks could claim the right to petition for an alteration in the laws.[32]

[32] Democratic Representative Faran's argument was erroneous and contradictory, at least in the sense that the legislators in the General Assembly kept receiving petitions from women. During the legislative session of the 37th General Assembly, Whig Senator Heman Birch of Medina and Lorain Counties presented petitions from ladies of Russia, Sheffield, Avon, and Wellington, in the county of Lorain, praying for the passage of certain resolutions on the subject of slavery, the annexation of Texas to the Union, and to give to every person in the State the right of trial by jury. This petition was referred to a select committee in the Senate. Also, Senator Aaron Harlan of Fayette, Madison, and Green Counties received petitions from ladies of Fayette County on almost the same antislavery measures. On the same day, Whig Senator Samuel Stokely presented the petition of eighty-three ladies of Steubenville in relation to the right of trial by jury, slavery, the slave trade, Texas' admission to the Union, and the Black Laws, and received other petitions of Jane Robinson, Elizabeth Job, and ninety-five other women of Jefferson County and those of Phebe C. Wilson, Mary Bellangee, and other one hundred thirty three women of the same County and also those of Eliza Dougherty, Hannah Griffith, and another one hundred twenty-seven women of the same County, for the repeal of all repressive laws in Ohio. On the next day, Senator Stokely presented another memorial from ladies of Jefferson County asking for the relief of the blacks in Ohio, the abolition of slavery and the slave trade, and the adoption of a resolution against the admission of Texas into the Union. The ladies of Cincinnati and Hamilton County chose the outstanding antislavery Senator Wade for their petitioning on almost the same antislavery measures on February 11. According to the logic of the opponents of the black

The Whigs did not stand idly by, however. Highly motivated by Faran's extreme proslavery and anti-democratic argument, moderate Whig Representative George Kirkum of Portage, from the Western Reserve came forward, expressing his confusion that even though he did not think he was an abolitionist, he now suspected that he might be, considering the course of things in the House around the petitioning right of blacks. Although he resisted all abolitionist movements, Kirkum added, there was an absolute minimum in the political condition of non-slaveholding states: the extension of equal laws to all people and the abolition of slavery in the District of Columbia. In his opinion, it was simple enough that the Constitution did not prohibit "any being on earth" from presenting his or her petition to the legislature. If the opponents of the petitioning right of blacks denied this simple fact of the Constitution, he declared, he did not fear to call himself an abolitionist. It seemed that Kirkum's argument was persuasive. The motion to reject the petition failed. After the futile effort to stop receiving the black petition, however, Flood succeeded in postponing Johnson's petition indefinitely. As shown in the Democratic denial of black petition right, from their perspective, every reform effort was another example of the conspiracy of abolitionist forces to destroy the Union and Ohio.[33]

The House Democrats, led by Flood, became more aggressive. Flood introduced a series of resolutions repudiating the whole antislavery endeavor. The House Whigs fought unsuccessfully against resolutions presented by Flood that condemned abolitionism, opposed

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petitioning right, women also had no constitutional right to petition the legislature. However, the antislavery petitioning of women became more noticeable and the favorable legislators did not neglect to receive it. *Journal and Register*, January 16, 1839; Ohio *Senate Journal: The 37th General Assembly*, January 21, 22, 1839.

[33] Ohio *House Journal: The 37th General Assembly*, January 11, 12, 14, 1839; *Journal and Register*, January 7, 16, 1839; *Ashtabula Sentinel*, January 14, 16, 1839; Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio* (Athens, Ohio: Ohio University Press, 2005), 100.

congressional measures against slavery, and denied the right of blacks and mulattoes to present petitions to the General Assembly. On January 14, 1839, after having tabled the antislavery attempt of Whig Representative George D. Hendricks of Preble County to adopt a resolution supporting Senator Morris, the House Democrats took up and passed Flood's resolutions, with minor revisions. In these resolutions, in addition to arguing that the Congress had no jurisdiction over the institution of slavery in the states, Flood regarded all attempts to abolish slavery in the states as being in violation of the Constitution. Affirming the Black Laws, he stated that it was "unwise, impolite and inexpedient to repeal the laws now in force, imposing disabilities upon black and mulatto persons, thus placing them upon an equality with the whites." Furthermore, abolitionist views were, according to Flood, "impracticable and dangerous," having a tendency to destroy the harmony the Union.[34] Therefore, the agitation of the subject of slavery in the non-slaveholding states was unnecessary and no good at all.

These anti-abolitionist resolutions were considered too draconian to accept for the antislavery Whigs from the Western Reserve, and they strove to revise portions of them or to insert declarations in favor of free speech and the right of petition into them. Whig Representative Justin Hamilton of Miami, Dark, and Mercer Counties tried to revise one resolution by inserting an antislavery sentence "that on the one hand while we hold that the freedom of speech and of the press should not be abridged, or the right of petition violated, we believe, on the other" after the word "and" in the third line of it. But, this was rejected by Democratic Representative John Brough of Fairfield County on the ground that the term "right of petition" might be construed to extend to blacks, and was altogether unnecessary. Hamilton's attempted revision failed. Unwilling to give up on adding some antislavery measures,

[34] This sentence was revised. In the original, abolitionist programs were "wild, delusive, and fanatical."

Representative Hamilton attempted to insert in a different resolution the statement that "every citizen has an indisputable right to speak, write, or print upon any subject, as he thinks proper, being liable for the abuse of that liberty." However, this was supplanted by Democratic Representative Brough's oppressive resolution confirming Ohio's Black law. Reaffirming the same anti-black policy of Ohio, it declared that "blacks and mulattoes who may be residents within this State, have no constitutional right to present their petitions to the General Assembly for any purpose whatsoever; and that any reception of such petitions on the part of the General Assembly is a mere act of privilege or policy, and not imposed by any expressed or implied power of the Constitution."[35] All antislavery Whigs' attempts to amend Flood's resolutions were resoundingly defeated and all Flood resolutions were passed by the House, by an overwhelming majority.[36]

The adoption of Flood's resolutions was a severe and unexpected blow to the abolitionists, who still could not rid themselves of the shock of the ousting of Senator Morris. The antislavery paper *Philanthropist* labeled these resolutions a Democratic maneuver to show fealty to the South and to link abolitionism with Whigism, evidence that the legislators had "bowed their necks to the southern task-master"[37] Although all the Whig Representatives of the Western Reserve voted against Flood's resolutions, that the Whigs were becoming increasingly

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[35] Ohio *House Journal: The 37th General Assembly*, January 12, 1839; *The Philanthropist*, January 29, 1839; *Journal and Register*, January 16, 1839; *Ashtabula Sentinel*, January 26, 1839. The Senate tabled the resolutions and ordered them printed but took no further action.

[36] The ardent support of most Whig Representatives helped adopt the Flood resolutions without any trouble. Every resolution was passed by a sweeping majority of votes (The first section: yeas 62, nays 2; the second section: yeas 58, nays 5; the third section: yeas 44, nays 15; the fourth section; yeas 47, nays 18; the fifth section, yeas 47, nays 16; the sixth section: yeas 41, nays 23), *Journal and Register*, 16, 1839.

[37] *The Philanthropist*, January 29, 1839.

anti-abolition, was shown by the ardent support of most Whigs for Flood's resolutions. Now abolitionists were able to justify their defection from the Whig Party in the fall election. As for the Whigs, their eager support for Flood's resolutions might have been political retaliation against the abolitionists who had bolted the Whig Party, but it also might have revealed their true class consciousness in that the Whigs outside the Western Reserve had grown increasingly wary of antislavery measures that might alienate a touchy South and imperil the Union and thus the Whig lawmakers did not hesitate to help in the adoption, or further play a positive role in the passage of these destructive anti-abolitionism resolutions in the legislature. One thing is clear: in spite of, or because of, the painful experience in the last election, the Whigs endeavored to shed their abolitionist brand and joined the Democrats' anti-abolitionist campaign waged in the 37th General Assembly. So, the abolitionists' efforts truly backfired.[38]

Some Whig Representatives expressed serious concern about this wayward anti-abolitionist campaign in the legislature. During the debates on Flood's resolutions, Whig Representative Seabury Ford of Geauga, who, later as Governor of Ohio, repealed the Black Law in 1849, argued that Flood's legislation was entirely useless in that there was nothing good accomplished by this legislation except the generation of more forceful antislavery movements. Ford stated that "the agitation of this subject in this place, will not allay, but only increase the

[38] After the Whig majority had vanished in the 1838 election, antislavery Whig Senator Benjamin F. Wade felt so frustrated that he castigated abolitionists who had bolted the Whig Party because he thought that the political ascendency of the Democrats would jeopardize the whole antislavery campaign. Wade blamed abolitionists, saying that "No doubt the Whigs lost the State this year through the influence of the Abolitionist," and added that "I hope they will learn before it is too late that they have lent themselves to a party who are devoted soul and body to Southern dictation." Even though Wade did not realize the fact that the Whigs' hostile attitude made abolitionists lose their all patience, he had a keen political insight into the gloomy reality that the dominance of the Democrats would be able to generate in the future. Wade to Samuel Henry, December 16, 1838, Joel Blakeslee Papers. Quoted in Hans L. Trefousse, *Benjamin Franklin Wade: Radical Republican from Ohio* (New York: Twayne Publishers, 1963), 33.

excitement which now prevails on this subject, and the very act of passing these resolutions is a direct contradiction of the proposition laid down in the second resolution," which criticized the agitation of the subject of slavery for harming the peace and harmony of the Union. Although he was critical of the anti-abolitionist campaign, he was also concerned that it would take the agitation of the abolitionists to a whole new level and would stir up more dangerous tensions between the North and the South. Claiming that his purpose in the reception of the black petition was to "destroy the strength and influence of the abolitionists, not only in Ohio, but throughout the Union," conservative Whig Representative Corwin of Champaign, who had earlier provided fodder for Flood's resolutions by submitting a repeal petition on behalf of blacks in his district, warned the advocates of Flood's resolutions that by rejecting this basic constitutional right of petition, they would help double or triple the force and influence of the abolitionists in Ohio. Unfortunately for the advocates of Flood's resolutions, Ford's and Corwin's predictions came true, in the end.[39]

The legislative fight over the right of blacks to petition resumed in the Senate right after the one-sided victory of the opposition to the black petitioning right in the House. Not only abolitionists, but also blacks were becoming aware of the outspoken antislavery Senator Benjamin F. Wade. Although they were disenfranchised and persecuted, they had hopes of bettering their lot. Since they were excluded from the common schools, they sought a charter to incorporate a school of their own. To present a petition for this purpose, they selected Senator Wade.[40] The Senator did not disappoint them. Well aware of the fact that the presentation of

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[39] *Journal and Register*, January 18, 1839.

[40] *Journal and Register*, January 23, 1839. The petition read as follows: "To the Hon., the General Assembly of the Senate of Ohio. We the undersigned, colored persons, resident in the State of Ohio, respectfully ask your honorable body, in behalf of the school institutions of the colored people in the State of Ohio, to incorporate the said institutions by enactment. The object

memorials from people who were not only unrepresented but also treated as inferiors throughout the state was sure to provoke a further row, Senator Wade was firmly convinced that an important principle was at stake. He was determined to stand by his civil right principles and presented the document from the blacks on January 19. 1839. The Democratic majority was furious. Democratic Senator George W. Holmes of Hamilton County hurried to deny the constitutional right of blacks to petition and moved that the petition be rejected. While Democratic Senator John L. Green of Pickaway and Franklin Counties agreed with Senator Holmes, he consented to receive the black petitioning as a grace and favor, not because of any constitutional right of blacks. While antislavery Whig Senator Stokely, a political comrade of Wade in the Senate, refuted any Democratic suggestion of the unconstitutionality of the black petitioning right, Wade irritated the Democrats and the conservative Whigs by arguing that the right of petition was a sort of natural right, beyond the constitutional right, which "was existent in all countries, in common law, and prior and superior to all written constitutions." Even though Wade strongly blamed the abolitionists for the defeat of the Whig Party in the fall election, he was now becoming one of the staunchest abolitionists in Ohio. In the Senate, this time, the conservative attempt to reject the petitioning right of blacks was thwarted by the united votes of the Whigs, aided by some moderate Democrats.[41]

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of the institution is, as expressed in the second article of the Constitution, 'The object of this institution is the promotion of education among the colored people of this State.' The reasons for asking this favor, are that the funds of the institution may be protected by the laws of the State, and that it may have the confidence of the public, upon whom it mainly depends for its funds. Your humble petitioners present the subject to the consideration of your honorable body, entitled to the common sympathies of humanity, and that they will at all future periods show themselves worthy of such favor. – Claiborne Yancy, President; James Leach, Secretary; H. Hans; R. R. Chanattor."

[41] *Journal and Register*, January 23, 1839.

The concerted anti-abolitionist assaults of the Democrats and conservative Whigs peaked in the adoption and passage of the Fugitive Slave Law, which provided, at Kentucky's request, for the more effective return of fugitive slaves and at the same time for the more effectual suppression of abolitionists. However, it would have been passed without Kentucky's appeal, considering that the Democrats, as well as slaveholders in neighboring Kentucky, had become uneasy about the agitation of abolitionists which had swept Ohio during the 1830s and therefore they waged an untiring anti-abolitionist campaign in the legislature. Throughout the 37th General Assembly session, the Democrats proved to be bitter enemies of abolitionism and the request of the Kentucky legislature simply provided fodder for another anti-abolitionist attack by the Democrats on the abolitionist forces. Reporting the arrival of the grand commissioners from Kentucky, the antislavery press *Philanthropist* did not fail to indicate that Flood's resolutions were "a harbinger of what is come," -- that is, the new Fugitive Slave Law. By citing the favorable opinions of the Whig press of the *Ohio Statesman* and *Cincinnati Whig*, the antislavery press implied that it was certain that the Ohio legislature would pass such a fugitive slave law as it deemed entirely satisfactory to the Kentucky commissioners "with great unanimity."[42]

It was clear to the abolitionists that the request by the Kentucky legislature was simply providing a pretext for the Ohio proslavery advocates to subdue the abolitionists by more oppressive anti-abolitionist measures and that the new fugitive slaves legislation would be most decisively a proslavery statute. In a communication to House Representative Charles B. Goddard on the subject of the Kentucky Commission, on January 19, 1839, abolitionist A. A. Guthrie clarified that the fugitive slave legislation was "a blow aimed at Abolition" and intended

[42] *The Philanthropist*, January 22, February 5, 1839.

for "the protection of slavery." Pointing out that the whole "*democratic*" character of Ohio was degenerating compared to other Northern states, he added that this law asked Ohioans to "countenance and endorse the system of breeding 'human cattle' for market," relegating them into "strict subserviency to the interests of Slavery."[43]

When the two commissioners – ex-Governor James T. Morehead and John Speed Smith – arrived in Columbus, they were met with open arms, as the *Philanthropist* predicted. On January 30, 1839, Governor Shannon transmitted the communication of the Kentucky commissioners to the legislature. On a motion by Thomas J. Buchanan, it was referred to the Standing Committee on the Judiciary with a resolution authorizing the said committee in their investigation of the fugitive slave matter. The Judiciary Committee in the House hastened to accede to the desires of the Kentucky commissioners.

On February 5, Democratic Representative P. P. Lowe from the committee reported "a bill relating to fugitives from labor or services from other States" for the first reading. It was first considered in the Committee of the Whole on February 7 and was laid on the table on motion of Whig Representative Fitch. Then, on February 8, on the motion of Representative Flood, the House of Representatives took up the fugitive slave bill again for some revisions and amendments. Several amendments were proposed. First, the Western Reserve Whig Thomas Howe of Trumbull County tried to limit the authority to issue warrants for runaway slaves only to judges, eliminating the fourth and fifth lines of the first section: "or to any justice of the peace or mayor of any city or town corporate." But, it did not stand a chance and was lost by a vote of 15 to 51. The antislavery Whigs did not give up. In opposition to the harsh amendment of Whig

[43] *The Philanthropist*, February 5, 1839.

Representative Joseph Kyle of Green County,[44] antislavery Whig Representative Seabury Ford of Geauga maintained that it was absurd because he made the decision of single magistrate final on the liberty of a human being. Other antislavery Whig Representatives such as Erastus Chester and Oramel H. Fitch from the Western Reserve, joined to revise some parts of the bill in favor of fugitive slaves, but to no avail. Although Kyle's amendment lost by a huge margin, there could be no consolation because another important civil rights section was included that denied amendments about the assistance of counsel.[45] As shown in the course of amending the fugitive slave bill, the united votes of the Democrats and the conservative Whigs thwarted any efforts by the antislavery Whigs to revise part of the bill in favor of fugitive slaves.[46]

On the following day, the bill was taken up again on the motion of Democratic Representative Thomas J. Buchanan. A number of amendments were offered and discussed. This time, antislavery Whig William B. Lloyd of Cuyahoga moved to revise parts of the bill in favor of the right of trial by jury as follows:

> "it shall be the duty of the justice, or other officer before whom such alleged fugitive, arrested under the act, shall be brought, forthwith to summon, in the manner now prescribed by law for empannelling juries before justices of the peace, on trial of rights and trial of property, a jury of twelve disinterested freeholders, residing in the county

[44] Kyle's amendment was suggested as follows: "Sec. 5. The claimant to the services of any person who may be arrested under the provisions of this act, which person shall have been arrested before going into the trial of his claim, shall enter into bond, to the satisfaction of the Judge, Justice, or Mayor, before whom the cause may come for hearing, conditioned for the payment of all the costs and loss of time, which such person may be subjected to whose services are claimed; which costs and loss of time he or she shall be entitled to recover of said claimant; Provided, said claimant shall not substantiate his claim to the satisfaction of such Judge, Justice, or Mayor." Ohio *House Journal: The 37th General Assembly*, February 8, 1839; *Journal and Register*, February 11, 1839.

[45] Kyle's another amendment was suggested as follow" "Sec. 6. Any person arrested under the provisions of this bill shall be entitled to have the assistance of counsel to conduct his defense." Ohio *House Journal: The 37th General Assembly*, February 8, 1839.

[46] Ohio *House Journal: The 37th General Assembly*, February 7, 8, 1839.

> where said justice or other officer may reside, who, with such justice or other officer, shall, therefore, proceed to hear and examine the evidence produced by the persons claiming such alleged fugitive, as well as, that produced in behalf of such alleged fugitive, as in any other cause usually tried before a jury; the same rights of challenge, both peremptory and for the cause, shall be allowed both parties as is now allowed in trials of a criminal nature in courts of record; and the verdict of the jury shall have no other effect than that now given by law to the decision of a justice in similar case."

This civil right section guaranteeing the right of trial by jury was discussed by a number of Representatives such as Lloyd of Cuyahoga, John Brough of Fairfield, Seabury Ford of Geauga, Tracy Bronson of Trumbull, and John W. Andrew of Franklin. Considering the conservative political environment in the House, the possibility of the insertion of the right of trial by jury into the bill was slim. It lost, 19 votes to 45. Unwilling to accept defeat, antislavery Whig Representative Bronson of Trumbull tried to eliminate the first three sections of the bill and antislavery Whig Fitch of Ashtabula offered an amendment to the effect that the warrant for the arrest of a person claimed as a fugitive from service or labor should be directed to the sheriff or constable of the county in which the judge or magistrate, issuing the same, shall reside, instead of being directed at any sheriff or constable in the State. However, these amendments did not stand a chance of passage. After much discussion, no change affecting the character of the bill was made and it was ready for engrossment and was scheduled for a third reading on February 11, 1839.[47]

Antislavery Whigs made final, desperate efforts to amend the fugitive slave bill. Fitch moved its recommitment to the Judiciary Committee, with instructions to amend it so as to secure the right of trial by jury for every person arrested as a fugitive from labor. But the House refused to recommit it. After some remarks by Whig Representative Justin Hamilton, in

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[47] Ohio *House Journal: The 37th General Assembly*, February 9, 1839; *Journal and Register*, February 11, 1839.

opposition to the bill, it was passed by a vote of 53 to 15.[48] This meant that over half of the House Whigs supported this stringent fugitive slave bill. In spite of the fact that many Ohio Whig papers warned of the devastating political impact of the adoption of the fugitive slave act on the future of the party, they did not listen to the warnings and supported the act.[49] In the legislature, they totally lost sight of the anti-Southernism and the anti-Whigism which grew increasingly among Ohioans because of the fugitive slave bill and other anti-abolitionist measures.

In the end, the passage of the fugitive slave legislation, aided by the conservative Whigs would hurt the Whig Party severely. Although abolitionists became disillusioned by the Whigs, they still left the door open for cooperation with them. Except for antislavery Whigs from the Western Reserve, however, the political position or attitude of the Whigs came to be hostile to the abolitionists, as demonstrated in a series of pro-Southern actions. Charles Hammond, who, as editor of The Whig *Cincinnati Daily Gazette*, was an ally of Birney and Bailey insofar as free speech and press were concerned, warned the Whigs that their anti-abolitionist actions would alienate abolitionists and, in the end, harm the Whigs. He criticized the anti-abolitionist action of the Whigs in the legislature, maintaining that they could gain nothing but "an apple of discord," in denouncing abolitionists, because the great body of abolitionists was Whigs.[50] He was right in pointing out the strategic failure of the Whigs in relation to the abolitionists. The abolitionists

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[48] Ohio *House Journal: The 37th General Assembly*, February 11, 1839; *Journal and Register*, February 13, 1839.

[49] On the several critical opinion of the Whig papers, see "Spirit of the Ohio Press." *The Philanthropist*, February 5, 1839.

[50] *The Cincinnati Daily Gazette*, March 13, 1839.

would begin in earnest to grope for independent political action and even ally themselves with the Democrats for the repeal of the Black Laws in 1849.

There was little opposition to bill in the House of Representatives.[51] In the Senate, however, it encountered staunch resistance from the antislavery Whigs. On February 13, on a motion from Senator George W. Holmes of Hamilton, the House's the fugitive slave bill was sent to the Committee of the Whole in the Senate. On February 14, on the motion of Senator William McLaughlin of Richland, the Senate went into Committee of the Whole, again. Right after that, Senator Gregory Powers of Portage, from the Western Reserve, attempted to eliminate the first five sections of the bill. Strongly opposed to the principles of the fugitive slave bill, Senator Powers argued that the bill was "no less than to degrade the State to the condition of a handmade to slavery" and compelled Ohioans to be "subservient to the perpetuation of slavery, in opposition to their own convictions of the rights and claims of humanity, and the doctrines of the Constitution" by exerting a coercion on them to be slavecatchers. To make matters worse, according to Powers, it could "give to the Abolitionists all the ground that they claim as the basis of their action – the right to interfere with slavery." In his opinion, Powers articulated that the adoption of the fugitive slave act would undermine state sovereignty and bolster the antislavery position in Ohio.

Stokely and Wade, outstanding antislavery Whig Senators, stood in the frontlines of the fight over the fugitive slave act. Since they did not need to repeat the major points that Powers

[51] After the final passage of the fugitive slave act, only staunch antislavery Representative Fitch of Ashtabula spoke out against the bill in his lengthy speech delivered on February 11, 1839. He expressed his opposition to the bill with every persuasive argument. In this speech, he indicated that the fugitive slave bill was introduced at the request of another State, not in compliance with the solicitations or wishes of Ohioans and that since this bill was made so quickly there was little time to examine its provisions or to consider its effect. Accordingly, he concluded, this bill was "unequal, oppressive, and unjust – an outrage upon the rights of a free people, and in violation of the constitution of our State, and the Ordinance of 1787." *Ashtabula Sentinel*, March 23, 1839.

had already indicated, they pointed out other troubling issues in the bill regarding the doctrine of concurrent jurisdiction. They opposed to the doctrine of concurrent jurisdiction. According to them, because the federal Fugitive Slav Law of 1793 had been operative well, another state law with regard to fugitive slaves was unnecessary. Two separate laws would necessarily conflict with each other. Furthermore, an individual might be punished twice for the same act. Indeed, their opinion would be proved right in the U.S. Supreme Court's decision in *Prigg* v. *Pennsylvania* which prohibited the state legislation regarding fugitive slaves.[52]

Although Wade and a few other antislavery Senators knew that they did not have sufficient votes to defeat the bill, they put up fight. Wade put up a vigorous fight over the fugitive slave bill. Already having made himself obnoxious to the Kentuckians through his reception of a petition from Reverend Mahan asking for compensation for legal fees incurred in his defense, Wade would not let the oppressive bill, which took particular aim at abolitionists like Reverend Mahan, pass.[53] On February 19, when, on the motion of Senator David Tod of Trumbull County, the Senate took up the bill with the amendments made by the Judiciary Committee, Wade was desperate to amend some part of it in favor of free blacks and fugitive slaves.

First, since the alleged fugitive slaves had no way to be compensated for their false allegation, Wade sought to prevent slavecatchers from prosecuting blacks indiscriminately and provide a reasonable safeguard for them by amending the fifteenth amendment by the Committee as follows:

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[52] *Prigg* v. *Pennsylvania*, 41 U.S. (16 Pet.) 539 (1842).

[53] Ohio *Senate Journal: The 37th General Assembly*, January 19, 1839; *Journal and Register*, January 21, 1839.

> *Provided*, That the person claiming said fugitive, his agent or attorney, shall give bond in the penal sum of three hundred dollars, with one or more good sureties conditioned to pay to the person so claimed, all costs and damages which he or she may sustain in consequence of such arrest and commitment, in case such claimant shall fail to establish such claim.

Indeed, Wade's amendment providing compensation for false accusation was necessary for the protection of personal liberty and freedom of black people. However, for this reason, this amendment could not be considered seriously in the debate for the adoption of fugitive slave legislation. Since most of the Senators knew exactly that they did not make a personal liberty law, they disagreed with him and voted the amendment down.

Rather than being discouraged, Wade tried again to amend the fifteenth amendment by providing that "the court, in receipt of the testimony on said trial, shall in all cases conform to the rules and principles of the common law." However, other Senate members did not want to approve it because of the common law prohibition that any potential witness who had an "interest" in the outcome of a case was not competent to testify in it. If this amendment was inserted, the claimants of fugitive slaves would lose their right to testify in the courts. The Senate members had no intention of passing this amendment, which was harmful to the slaveholders. Wade then proposed another amendment, that neither the affidavit upon which the arrest was made, nor the testimony of any person interested in the services of such fugitive, shall be received in evidence upon the trial. This was a small trick which was intended to deny the testimony of the claimant, but nobody was gullible enough to swallow Wade's trick whole. Well aware of the fact that some parts of the bill would be completely able to suffocate the activity of the abolitionists, lastly, Wade attempted to revise some parts of the twentieth amendment, which

made it a penal offence punishable by the laws of the State, to entice, or facilitate the escape from labor, of any slave, but to no avail.[54]

Inspired by Wade's untiring fight, fellow Whig Senators continued to propose a series of amendments. They wanted to provide some protections for fugitive slaves as well as for free blacks, who stood in danger of kidnapping under the provisions of the proposed bill. There was no real hope for success, but the dissidents refused to quit. Then, Senator George J. Smith of Warren County once again sought to undermine the claimants' competency of testimony, suggesting a modification that "neither of the affidavits mentioned in this act, nor of the claimant of such fugitive, shall be received in evidence upon the trial." For the same purpose, Whig Senator William I. Thomas presented a revision that "the affidavit of any claimant, or his agent, or the oath or affidavit of any person interested shall not be received in evidence against any fugitive, upon the final hearing of the cause." But, both amendments lost by the same vote of 11 to 22. The affidavit or testimony of the claimant must be considered an important safeguard which should be guaranteed in the bill for slave reclamation.

There was another attempt to provide protection for the Ohio abolitionists, when Whig Senator Powers moved to remove the word "harbor," which would make the humane individual who might help a hungry, sick, or suffering fugitive on humanitarian grounds chargeable with a criminal offence. Several Senators expressed a friendly attitude towards this amendment, showing their support. But, again, the Senate Democrats succeeded in voting it down.[55] To the abolitionists, it was an "inalienable right" to help the poor and innocent, like the wretched

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[54] Ohio *Senate Journal: The 37th General Assembly*, February 19, 1839; *Journal and Register*, February 20, 1839; *Ashtabula Sentinel*, February 23, March 2, 1839.

[55] Ohio *Senate Journal: The 37th General Assembly*, February 19, 1839; *Journal and Register*, February 20, 1839; *Ashtabula Sentinel*, March 2, 1839.

fugitive slaves. By denying this humanitarian aid in the enactment, the proslavery advocates in the legislature would make the law enforcement officers encounter the most ferocious resistance to the fugitive slave law. Abolitionist Guthrie, criticizing this section, declared that the fugitive slave law would be a "dead letter," or, "if used at all, it will be but as the engine of malice or persecution. It would serve mainly for an enduring monument of the folly, the meanness, and wickedness of the legislature who formed it."[56]

On February 22, 1839, the House bill (No. 288) relating to fugitives from labor or service from other states finally passed the Senate by a huge margin.[57] Until the last minute, however, the antislavery Whig dissenters refused to give up. Determined to register their undying opposition to the oppressive fugitive slave measure, the dissident Whigs kept the Senate in session throughout the night. On February 21, when the Senate took up the bill for the final reading and voting, Senator Wade tried again to insert the right of trial by jury and the formation of twelve impartial jurors into the bill through adding an additional six sections.[58]

In a more assertive effort, Senator Thomas sought to minimize the effect of the law by decreasing law enforcement agencies, as this amendment provided that no justice of the peace, mayor or alderman of any city or town corporate, of this State, shall have jurisdiction or take cognizance of the case of any fugitive from labor from any of the United States or territories. Senator Thomas's measure restricting judicial power of state officials regarding fugitive slaves

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[56] *The Cincinnati Daily Gazette*, March 13, 1839.

[57] The bill passed the Senate by a vote of 26 to 10.

[58] Senator Wade sought to amend the fugitive slave bill by adding six sections from the fourteenth to nineteenth. In these amendments, Wade tried to secure the right of trial by jury and, further, to clarify the rules of the formation and duty of the twelve jurors for the just trial. But these amendments lost by a vote of 9 to 26. Ohio *Senate Journal: The 37th General Assembly*, February 21, 1839.

would be used in a series of personal liberty laws which were passed in the several Northern states as a result of the U.S. Supreme Court decision in *Prigg* v. *Pennsylvania*.[59]

Broader variety of legal safeguards was devised to lay a foundation for later personal liberty laws. To provide more protections for fugitive slaves and free blacks in the case of illegal in-state slave traffic, Senator Stokely proposed an amendment stipulating that all sales that shall hereafter be made within this State, of any fugitive, or fugitives from service or labor, who, at the time of such sale or sales, shall be within the limits of this State, shall be utterly null and void. In addition, Senator Powers, in his new amendment, provided the alleged fugitives with a chance to appeal to the Court of Common Pleas. Actually, Powers' measure of the right of appeal would be reflected in the national personal liberty law in 1861.[60]

The final version of the Fugitive Slave Law, composed of total fourteen sections, was essentially the most forceful anti-abolition legislation. In 1839, the Ohio Democratic legislature completed the restoration of proslavery fugitive slave policy by it.[61] This law was essentially different from the previous fugitive slave laws in Ohio and other states in that it did not aim just at revising or elaborating some state procedures for regulating the recapture and return of fugitive slaves. First of all, the Fugitive Slave Law of 1793 was a law in force within the State and so recognized. In addition, the Black Laws were intended to conform to it, so far as they related to the reclamation of runaway slaves, and remained still in effective without question.[62] Therefore, there was no need for another powerful fugitive slave law. But the Ohio legislature

[59] Ohio *Senate Journal: The 37th General Assembly*, February 21, 1839.

[60] Ohio *Senate Journal: The 37th General Assembly*, February 21, 22, 1839.

[61] An Act to relating to Fugitives from labor or service from other states, 37 Laws of Ohio 38 (1839).

[62] The second section of the 1831 antikidnapping act provided that the recapture and returning of the fugitive slave should be made "agreeably to the laws of the United States."

recited in the preamble of the Fugitive Slave Law that more stringent legislation should be enacted because the national Fugitive Slave Law, "now in force within the State of Ohio," were "wholly inadequate to the protection pledged by this provision of the constitution to the southern states of the Union" and that the federal Constitution could "only be sustained as it was framed, by spirit of just compromise."[63]

On the surface, it seemed that the Democratic-controlled Ohio legislature intended to settle peacefully some conflicts with the Southern slave states, especially Kentucky, over runaway slaves who fled to Ohio. Of course, there is no doubt that one of the important reasons for the enactment of the state's fugitive slave law was its deteriorating relations with Kentucky. Even though it was regarded as a way to improve relations between the two states, the new state fugitive slave law was overly comprehensive and repressive. Furthermore, even if the federal Fugitive Slave Law of 1793 was ineffectual in protecting slaveowners' rights, it was for Congress – not the Ohio legislature – to make good the deficiencies of that law. More importantly, Ohio's response to the complaints and requests of the Kentucky legislature regarding fugitive slave problems was excessively quick and receptive, compared to similar cases in other states.[64]

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[63] An Act to relating to Fugitives from labor or service from other states, 37 Laws of Ohio 38 (1839).

[64] Especially, Pennsylvania was unresponsive and, at least, unenthusiastic in its reaction to the requests of the Maryland legislature for more efficient fugitive slave law, until the enactment of the state fugitive slave act in 1826. Ironically, the final act with the Quaker amendments became an actual "personal liberty law" because under this law there was no way for slaveowners to reclaim fugitive slaves and be safe from prosecution as kidnappers. Most of all, the final act prohibited from being received in evidence the oath of owners or their agents on the hearing of the case and forbade any alderman or justice of the peace of Pennsylvania from taking cognizance of any fugitive slave case under the national Fugitive Slave Law of 1793. The last two provisions were what antislavery Whigs in the Ohio Senate most sought to achieve in the course of revising the fugitive slave act of 1839. See William R. Leslie, "The Pennsylvania Fugitive Slave Act of 1826," *The Journal of Southern History* 18, no. 4 (November 1952).

All things considered, the 1839 Ohio law was not intended merely to carry out the federal constitutional provision by providing procedures for delivering up fugitive slaves, nor was it about restoring comity within the federal Union. Instead, the spur to this action was an anti-abolitionist willingness to strike a severe blow at the growing abolitionist movement. Even though this law contained an anti-kidnapping section, it could not dilute its anti-abolitionist nature. In a critical editorial written just before passage of the fugitive slave law, Bailey, a famous Ohio antislavery editor, made clear the nature of this law, asserting that it demanded Ohio to be "the patient, well-drilled, well-skilled, indefatigable, sleepless, unscrupulous, slave-catcher of Kentucky."[65]

The state Fugitive Slave Law authorized state officials to arrest the alleged fugitives after a warrant was issued by "any judge of any court of record in this state," "any justice of the peace," or "the mayor of any city or town corporation" based upon an oath or affirmation of the slaveowners or their agents. To remove a fugitive slave from one state to another, a claimant needed only to go before a state judge and produce proof to the satisfaction of such judge that the fugitive slaves owed labor to their owners according to the laws of their home state. Section III provided penalties for anyone who obstructed or hindered the state officers in arresting fugitives or who rescued them, or who assembled together with the intent to obstruct or interrupt state officers or claimants in arresting or removing the fugitives. Section IV even offered claimants sixty days of postponement of the hearing in case they were not prepared for trial. Much worse, Section VI made anyone who enticed or aided a fugitive slave to escape from their owner liable to them up to five hundred dollars, and Section VII provided a similar penalty for those who gave false certificate of emancipation, or who harbored or concealed a runaway slave.

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[65] *The Philanthropist*, February 19, 1839.

Eventually the state Fugitive Slave Law would make all courts and law enforcement officers slavecatchers and would disarm abolitionists completely. As the Ohio abolitionists had excoriated, the legislature indeed made Ohio "the paradise of kidnappers."[66]

In spite of the passage of the forceful Fugitive Slave Law, the antislavery Whigs in the legislature presented more advanced and radical antislavery legal principles which would appear in subsequent personal liberty laws of the North, and finally in the Fourteenth Amendment to the Constitution. As the antislavery struggle of the dissident Whigs in the Senate over the Fugitive Slave Law intensified, the Fugitive Slave Law became increasingly a symbol of slavery that existed in the free state of Ohio, not just in the slaveholding states in the South. Therefore, it became a rallying point and strategic political target of a more militant antislavery movement in Ohio. In the antislavery struggle to repeal the Fugitive Slave Law, antislavery forces would lay the groundwork for the development of the progressive legal principles underlying personal liberty laws. From now on, the Ohio antislavery movement would take advantage of the Fugitive Slave Law as another political battleground, in order to fight against the proslavery advocates in the North and South.

There is little doubt that the 1838 election and its aftermath dealt a devastating blow to the Ohio abolitionists. First, they lost the best abolition Senator, Thomas Morris, because the Democrats deliberately repudiated him due to his strong antislavery position. Secondly, the Democratic majority, led by anti-abolitionist Representative Flood, passed a series of anti-abolitionist resolutions that condemned abolitionism, opposed congressional measures against slavery, and denied the right of blacks to petition. Thirdly, and most important of all, the new and stringent state Fugitive Slave Law passed both houses of the General Assembly by huge margins.

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[66] *The Philanthropist*, November 20, 27, 1838, October 22, 1839.

In conclusion, the 1838 election and the formation of a Democratic legislature as a result of it, marked a new era, in which anti-abolitionism entered Ohio politics in full force and with clear intention. However, the emergence of anti-abolitionist politics backfired. In the first place, the untiring anti-abolitionist attacks by the Democrats, aided by the conservative Whigs throughout the session of the 37th General Assembly, and the passage of the Fugitive Slave Law as its culmination, provided abolitionists with a new and significant strategic objective, the repeal of the repressive Fugitive Slave Law. In the second place, it also brought about the intensification of antislavery agitation over fugitive slaves, which would cause quite a stir in political circles and reinforce the antislavery politics in the nation, as well in the State, at an unprecedented level, especially after the adoption of the national Fugitive Slave Act of 1850. In the third place, the betrayal of the conservative Whigs in the 37th General Assembly made abolitionists seriously reconsider the need for an independent political organization, which they had long resisted due to fears of corruption and the danger of compromising their political ideals of human freedom and civil rights in the antislavery movement.

The appearance of the state Fugitive Slave Law was signal moment in the history of abolitionism in Ohio. The Fugitive Slave Law was not just designed to supplement or readjust some legal procedures of the rendition of fugitive slaves. Rather, it was intended to crush the emerging antislavery movement in Ohio, as proved in the every section of the law and at the same time in the other anti-abolitionism measures of the 37th General Assembly. In other words, the 1839 Fugitive Slave Law was a serious threat, not only to fugitive slaves and free blacks, but also to antislavery movement itself because it made illegal any action of the abolitionists regarding runaway slaves. In addition, by reaffirming the spirit of federal compromise and Unionism as dominant principles that were ahead of any consideration of human rights and racial

justice, the state Fugitive Slave Law relegated the agitation and rescue operation of abolitionists to treasonable acts. Accordingly, it was natural that the passage of the repressive new law inspired abolitionists to acts of militant resistance. The adoption of the state Fugitive Slav Law determined the direction of antislavery movement in the 1840s, which would revolve around fugitive slave question and the necessity of personal liberty laws. The antislavery struggle to repeal the "Bill of abominations," as outraged abolitionists termed it, would become a critical political force that broadened the foundation of antislavery movement, blended civil rights into the larger struggle, and laid the groundwork for the personal liberty laws.[67]

[67] *The Philanthropist*, January 22, February 19, 26, May 21, 1839.

Chapter Three

"Take your pound of flesh, but not one drop of blood":

The Repeal Movement, Source of Radical Antislavery Politics

The adoption by the 37th General Assembly of Ohio of "ultra anti-abolition" measures, including the Fugitive Slave Law of 1839, represented the emergence of full-scale political anti-abolitionism in Ohio.[1] Characterized earlier by intermittent mob outbreaks and the formation of anti-abolitionist societies,[2] in the 37th legislature anti-abolitionism began to take the form of political and legal actions by pro-southern and conservative lawmakers. During this session, the Democratic-controlled legislature not only denied the constitutional right of blacks to petition the Ohio legislature, but also adopted the draconian Flood resolutions, which reaffirmed the absolute constitutional status of slavery and warned of the grave peril the abolitionist plans and agitations posed to the preservation of the Union.[3]

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[1] The "ultra anti-abolition" measures, as moderate Whig Representative George Kirkum of Portage County, termed them, includes the rejection of black petitions, the Flood resolutions, and the state Fugitive Slave Law. *The Philanthropist*, March 12, 1839.

[2] Francis P. Weisenburger, *The Passing of the Frontier, 1825-1850*, vol. 3, *The History of the State of Ohio*, 6 vols. ed. Carl Wittke (Columbus, Ohio: Ohio State Archaeological and Historical Society, 1941), 371-75.

[3] Representative George H. Flood of Licking County who represented the Democratic majority in the House of Representatives introduced, and led the adoption of, the draconian anti-abolition resolutions which declared 1) Congress had no jurisdiction over the institution of slavery in the several States of the Union; 2) the "impractical and dangerous" schemes of the abolitionists had a direct tendency to destroy the harmony and perpetuity of the Union; 3) all attempts to abolish or restrict slavery were in violation of the Constitution of the United States and the fundamental principles on which the Union of the States; 4) it was "unwise, impolite [*sic*], and inexperienced" to repeal the Black Law; 5) black and mulatto residents of Ohio have no constitutional right to present their petition to the General Assembly for any purpose whatsoever. *Journal of the House of Representatives of the State of Ohio: The 37th General Assembly*, January 15, 1839; *Journal and Register*, January 16. 1839.

However, the most alarming and menacing anti-abolitionist measure passed by the 37th General Assembly was a Fugitive Slave Law, which was called the "Black Bill," "Black Act," or "Kentucky Fugitive Bill."[4] Legal historian Michael Les Benedict maintained that the purpose of the Ohio law was to "prevent slave catchers from seizing alleged fugitives and taking them out of the state without legal process, and to provide the victims with the opportunity to rebut the allegations, a right that the federal statutes denied."[5] In other words, he envisions the 1839 Ohio Fugitive Slave Law as a sort of personal liberty law, emphasizing the establishment of the seemingly fair legal procedure in the act. However, his interpretation ignores or misses the political context in Ohio at the time the law was adopted and marginalizes the original intention of the lawmakers who supported it. In short, Benedict tends to pay too much attention to part of the text of the law. In so doing, he misreads or downplays other parts of it. This 1839 Ohio law set up a comprehensive system of suppression of Ohio abolitionists and provided extensive protection to the slaveowners' right to reclaim fugitive slaves in Ohio with the assistance of state law enforcement.[6]

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[4] An Act to relating to Fugitives from labor or service from other States, 37 Laws of Ohio 38 (1839), reprinted in Stephen Middleton, *The Black Laws in the Old Northwest: A Documentary History* (Westport, Connecticut: Greenwood Press, 1993), 111-16; Joseph R. Swan, ed., *Statutes of the State of Ohio of a General Nature* (Columbus: Samuel Medary, State Printer, 1841), 595-600.

[5] Michael Les Benedict, "Civil Liberty in Ohio," in *The History of Ohio Law*, ed. Benedict and John F. Winkler (Athens, Ohio: Ohio University Press, 2004), 686.

[6] The Cincinnati *Philanthropist*, an influential Ohio abolitionist paper, described the nature of the 1839 state Fugitive Slave Law lengthy but clearly as follows: "the Black Law of 1838-39, that bill of abominations, that thing, that monstrous thing that was conceived in sin and brought forth in iniquity, that converts the ministerial officers of Ohio into hunting dogs to go at the bidding of southern tyrants like bloodhounds, that howl on the trial of frightened fugitives, whose only sin is that they love liberty – that unhallowed enactment of mercenary legislature, that makes it penal to exercise benevolence towards a man with a colored skin, and that recognizes (contrary to our constitution) the rightful existence of slavery in the free state of Ohio." *The Philanthropist*, November 18, 1840.

The Ohio Fugitive Slave Law established a system by which state officers strengthened control over abolitionists' possible or substantial assistance to fugitive slaves and at the same time superintended the arrest, trial, and delivery of fugitive slaves to their owners. As a result, the Fugitive Slave Law made all state judges and police officers into slavecatchers and precluded abolitionists from aiding or rescuing runaway slaves completely. In addition, the Fugitive Slave Law created a hostile environment in which free blacks in Ohio could fall into the perpetual bondage of slavery without any legal way to prove their status. Ohio abolitionists complained bitterly that the Ohio legislature obsequiously capitulated to the Kentucky slaveowners' demands. Just as the Fugitive Slave Act of 1850 was to later arouse a storm of opposition throughout the North, so, too, Ohio's Fugitive Slave Law of 1839 whipped antislavery advocates into intense agitation for its repeal in the early 1840s.

This chapter focuses on the Ohio abolitionists' repeal movement in the early 1840s which worked as a major source of radicalization of antislavery politics in Ohio. First of all, it deals with the strength of political anti-abolitionism being persisted after the passage of the Fugitive Slave Law. And then, it demonstrates how the adoption of the Fugitive Slave Law helped engender the spread of unexpected but forceful antislavery sentiments among Ohioan and affect the advent of independent third party movement against political anti-abolitionism. After that, it explores the gradual change of legislative attitude on the Fugitive Slave Law and the progressive move of the state judiciary in regards to slaveholders' right to slaves in Ohio. In some sense, the formation of the Ohio Liberty Party benefited from the passage of the Fugitive Slave Law in that, first, the law was created in the complicity of the Whigs with the proslavery Democrats and, as a result, the political abolitionists became disillusioned with the Whig Party; second, in order to repeal the Fugitive Slave Law, the Ohio abolitionist needed to take a more

practical and efficient strategy and tactics dissimilar to those of the American Anti-Slavery Society led by William Lloyd Garrison. Accordingly, the next question is in what way the Ohio Libertyites were making their political identity and central idea in the course of repeal movement. In this sense, this chapter examines the influence of the *Prigg* Decision of the United States Supreme Court and several fugitive slave cases on the shift of the political abolitionists' constitutional and political positions in regard to the fugitive slave and slavery. One last thing this chapter addresses is the concerted efforts of political and moral abolitionists in the repeal movement. It suggests that the political abolitionists and Garrisonians put aside their difference over some antislavery strategy and tactics and closed ranks behind the politics of personal liberty regarding fugitive slave issue.

In so doing, this chapter argues that the Ohio abolitionists' antislavery struggle to repeal the Fugitive Slave Law contributed to maintain their radical tenets in regard to fugitive slave issue in the process of politicization of abolitionism. In other words, it claims that the repeal movement laid the foundation for the radical political abolitionism sticking to high-minded egalitarianism and personal liberty without compromise and accommodation and at the same time questioning the authenticity of the antislaveryism of the Whigs consistently. Ultimately, this chapter argues that to understand the dynamics of Ohio antislavery politics in the early 1840s, we must fully appreciate the state Fugitive Slave Law of 1839, the repeal movement, and their complex and unfailing influence over Ohio abolitionists. Without appreciating them, it is hard to understand the radicalization of the Ohio antislavery movement in the early 1840s when anti-abolitionism was getting more powerful politically in there.

In one sense, the series of repressive anti-abolitionist measures adopted by the 37th General Assembly of Ohio showed that anti-abolitionism was more popular and more politically powerful than either sympathy for fugitive slaves or concern for equal rights. First of all, this was proved in the revival of the American Colonization Society in Ohio at almost the same time as the emergence of political anti-abolitionism there. Founded in 1816 to assist free black people in emigrating to Africa, specifically to the colony of Liberia, the American Colonization Society had been widely accepted and advocated as a solution to the race problem and as an appendage of gradual emancipation for many years. But the Colonization Society had faded from importance by the 1830s for several reasons such as blacks' non-cooperation, white abolitionists' opposition, and government apathy.[7] All of a sudden, however, the vanishing American Colonization Society began to recover its strength in Ohio. During the 37th General Assembly, abrupt legislative action to revive and reorganize the Ohio State Colonization Society was launched in the middle of a violent storm of anti-abolitionism in the legislature. On January 28, 1839, the legislature gave permission for the Ohio State Colonization Society to use Representative Hall and many legislators attended the meeting. In addition, Democratic Representative George H. Flood, a leader of the anti-abolition campaign in the House, offered a series of resolutions approving and recommending the project of colonization.[8] It is apparent

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[7] On the basic information of the American Colonization Society, see Early Lee Fox, *The American Colonization Society, 1817-1840* (Baltimore: The Johns Hopkins Press, 1919); Henry Noble Sherman, "The Formation of the American Colonization Society," *Journal of Negro History* 2, no. 3 (July 1917): 209-28; Amos Beyan, *The American Colonization Society and the Creation of the Liberian State* (Lanham, MD: University Press of America, 1991); Eric Burin, *Slavery and the Peculiar Solution: A History of the American Colonization Society* (Gainesville: University Press of Florida, 2005). For the short history of the Colonization Society in Ohio before 1839, see Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio* (Athens, Ohio: Ohio University Press, 2005), 77-80.

[8] *The Philanthropist*, February 12, 1839.

that the Democrats sought to use the Colonization Society as a counterweight to the growing Anti-Slavery Society in Ohio.

Even though there might have been sincere persons who thought colonization would benefit blacks in a real sense, the revived Ohio Colonization Society at the end of the 1830s embraced more obvious political and economic motives in that most of the members joined the Society because of their hatred of abolitionism and in the commercial interest of Cincinnati and, thus, played a major role in mobocracy in the city. Charles Hammond, the independent editor of the *Cincinnati Daily Gazette*, spoke up against this anti-abolitionist ploy, by hinting that colonization was nothing more than a sop offered by slaveholders to public sentiment, declaring that he was anti-colonization as well as anti-slavery and anti-Atherton gag.[9] More vociferous in denouncing the anti-abolitionist inclination of the Colonization Society was Gamaliel Bailey, the antislavery editor of the *Philanthropist*. Bailey indicated that all of the nominated officers of the Ohio Colonization Society were rank opponents of abolitionism and had the motto "down with Abolition, peaceably if we can, forcibly, if we must." According to Bailey, the Colonization Society meeting held in the chapel of Cincinnati College showed clearly the anti-abolitionist motive of the Ohio Colonization Society. Refuting the speech by Jonathan Blanchard, pastor of the Sixth Presbyterian Church, who claimed that the Colonization Society was "the strongest protection of American Slavery which could be devised,"[10] in the meeting, F. W. Thomas glorified slavery and cried, "We have crushed Abolitionism…It is now entombed. Let the only

[9] *Cincinnati Daily Gazette*, April 17, 24, May 6, 9, 1839.

[10] Blanchard indicated one of the major Colonization schemes regarding fugitive slaves. According to Blanchard, one of the sources of danger to the slave system was the escaping slaves to the free states. So, the supporters of slavery devised the Colonization Society to remove all free colored people out of the free states. By doing this, every colored people seen north of Mason and Dixon's line might be known to be a runaway slave. Thus, colonization would favor the recapture of fugitive slaves by cutting down their shelter ground in the free states. *The Philanthropist*, March 26, 1839.

epitaph on its tombstone be the indignation of a free people." In addition, the Rev. T. A. Mills and W. H. McGuffey expressed their belief in the same meeting that the colonization cause would promote the interests of Ohio white people by separating delinquent blacks from the whites and by promoting commercial trade with the South. In short, the revived Colonization Society made it sure that its major and only objective was to abate an efficient antislavery sentiment in Ohio.[11]

The defeat of the radical antislavery Benjamin F. Wade and the general Democratic sweep of the state in the election of 1839 were further evidence of the political power and popularity of anti-abolitionism in Ohio. In the first place, Senator Wade, who had been an outspoken opponent of the Fugitive Slave Law and of slavery in the 37th legislature, could not be renominated by the local Whig Party because his radicalism frightened conservative Whig leaders. So, he ran on a Whig abolitionist ticket against another Whig candidate, but was defeated. In Geauga and Ashtabula, the Whig majority was so large that the influence of the abolitionists was limited. While the *Ashtabula Sentinel* attempted to deny that Wade was an abolitionist, it also indicated that his radical antislavery position cost him his renomination and caused his defeat in the election on an independent Senatorial ticket.[12]

Secondly, the election of 1839 resulted in the Democratic victory again which was even more sweeping than the preceding. The Democrats dominated the both Houses once again. Of course, it could not be said that the abolitionists or political anti-abolitionism were the sole cause for the general Democratic sweep of the state. However, the defeat of Wade and the reelection

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[11] *The Philanthropist*, March 12, April 9, 1839.

[12] *Ashtabula Sentinel*, October 5, November 23, 1839; *The Philanthropist*, September, 3, 1839; Theodore Clarke Smith, *The Liberty and Free Soil Parties in the Northwest* (New York: Longmans, 1897; reprinted, 1967), 31-32; Hans Louis Trefousse, *Benjamin Franklin Wade: Radical Republican from Ohio* (New York: Twayne Publishers, 1963), 41-42.

of the leading anti-abolitionist Flood signified unmistakably that disillusionment with, or fear of, radical abolitionism were spreading widely among Ohioans for social and economic reasons. The Democrats took advantage of the anxiety of Ohioans, and the Whigs were busy purging themselves of abolition influence. As for the Ohio abolitionists, they became deeply distrustful of the state's Whigs for their impotence and apathy, as well as for the betrayal after the passage of the Fugitive Slave Law in the previous legislature. Consequently, Ohio abolitionists withdrew their support for the Whig candidates completely or gave up the vote itself. Considering that Ohio abolitionists scarcely presented an antislavery petition to the legislature for a month after the 38th legislature began in December 2, 1839, it is evident that Ohio abolitionists' fight for the repeal of the 1839 Ohio law could not gather enough momentum due to the desertion of the Whig Party, the absence of an effective political organization, and the lack of a strategy on which to rely.[13]

The Democrats, who came to dominate the 38th General Assembly following their landslide victory in the election, made it clear that anti-abolitionism was still an important political agenda. Eager to reflect the concerns of anti-abolitionist adherents, they took quick action to crush any antislavery measures. Anti-abolitionist efforts were made by the Democratic-controlled legislature to break down the Oberlin Collegiate Institute, which had a reputation as a hotbed of abolitionism. Senator James Matthews of Knox, Coshocton, and Holmes Counties introduced a repeal bill and a petition from the citizens of Lorain, in which the Oberlin Institute was situated, praying for the repeal of the charter of the Oberlin Collegiate Institute.[14] Based on

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[13] Smith, *The Liberty and Free Soil Parties in the Northwest*, 32; *The Philanthropist*, January 21, 1840.

[14] Senate Bill (No. 68): An Act to repeal the act entitled an act to incorporate the "Oberlin Collegiate Institute." Ohio *Senate Journal: The 38th General Assembly*, January 22, 1840.

his unofficial probe into the college which claimed that "the managers, professors, and other teachers have emphatically used their influence to inculcate the doctrines of abolitionism in the minds of those under their charge, and to promote the general cause of abolitionists," Senator Matthews produced a negative report that the whole members of the Institute were "guilty of flagrant violations of the criminal laws of our state and a wreckless [*sic*] breach of the plighted faith between Ohio and her sister states that are authorized by their constitutions and laws to hold slaves." The legislature, not entirely convinced by Matthews' report and disagreeing with the call for a formal investigation, tabled the bill after a close vote during that session.[15]

Earlier in this session in the House, there had been another attack on the Oberlin Institute. Democratic Representative John M. Jenkins of Columbiana County voted in opposition to a bill to incorporate the Dialectic Association of Oberlin College,[16] contending that its real object of spreading abolitionism was concealed. After making this accusation, he offered an amendment providing that "it shall not be lawful for abolition lecturers to lecture in said association." Supporting Jenkins' accusation, Representative Byram Leonard also opposed the bill and said that he was against anything which tended to reorganize the Oberlin Institute. Resentful of the rejection of this amendment, Representative Flood offered several anti-abolitionist resolutions very similar to those presented in the previous session. In these resolutions, Flood reaffirmed his conviction that the interference of abolitionists in the institution

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[15] Ohio *Senate Journal: The 38th General Assembly*, March 10, 1840; Clayton S. Ellsworth, "Ohio's Legislative Attack upon Abolition Schools," *Mississippi Valley Historical Review* 21, no. 3 (December 1934): 380-81.

[16] House Bill (No. 44): An Act to incorporate the Dialectic Association of Oberlin Collegiate. The Senate refused to pass the bill by a vote of 9 to 18 and showed a strong hostility to the Oberlin Institute. After the reconsideration, the bill was tabled after all. Encouraged by this result, Senator Matthews offered a resolution instructing the committee on Corporation to inquire into the expediency of passing a law to repeal the charter of the Oberlin Collegiate Institute. Ohio *Senate Journal: The 38th General Assembly*, January 15, 16, 1840.

of slavery of the South was "unlawful, unwise, and unconstitutional" and added that it was the duty of "all good citizens to discountenance the abolitionist in their mad, fanatical, and revolutionary scheme." Flood was not alone in this aggressive anti-abolitionist stance. On January 28, Democratic Representative Edwin Fisher of Shelby and other western counties joined Flood in offering similar resolutions accusing abolitionists of instigating slave insurrection by "violent and inflammatory speeches." His resolutions were simply a reiteration of the penalty provisions of the state Fugitive Slave Law and, in some cases, were even worse. For example, one of those resolutions provided that "the person secreting a runaway negro slaves, or aiding the same to escape should be punished by imprisonment in the penitentiary and be answerable to the party injured in four fold damage.[17]

While the Democratic-controlled legislature showed a favorable attitude to the anti-abolitionist petitions, it ignored the antislavery petitions. Especially, Representative Flood stifled all major antislavery petitions through the Standing Committee on the Judiciary. On February 3, as a member of the Judiciary Committee, Flood made a report on the petition from citizens of Highland and Brown Counties praying for the repeal of the Fugitive Slave Law of 1839, stating that the committee did not have any doubt about the "salutary effects" of the law and the House sustained this opinion of the committee by a decided vote.[18] On February 27, Flood made a negative report on the petition of citizens of Columbiana County praying for the passage of an act "providing that a citizen of any State in the Union shall be, on entering this

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[17] Ohio *House Journal: The 38th General Assembly*, January 3, 28, 1840; *The Philanthropist*, January 21, February 4, 1840.

[18] Ohio *House Journal: The 38th General Assembly*, January 22, 1840; *The Philanthropist*, February 11, 1840.

State, entitled to all the privileges and immunities of citizens of this State."[19] Actually, Flood did not have any reason to oppose this reasonable petition if it applied to white people. But it is evident that he detected a possibility in the petition that this kind of legal provision could apply to African Americans and opposed it.

Although it appeared that the rise of political anti-abolitionism stifled and crushed any antislavery efforts to resist the new Fugitive Slave Law of 1839 in the 37th and in the 38th General Assembly, the storm of protest which followed passage of the state Fugitive Slave Law never subsided, and Ohio abolitionists did not neglect to organize their resistance to the law at all. In the first place, the vast network of antislavery societies, which was now an integral part of the Ohio antislavery effort, organized lots of protest meetings as a "repeal movement" right after the passage of the Fugitive Slave Law. On May 11, 1839, the Georgetown Anti-Slavery Society of Huron County, in a special meeting, passed resolutions to openly denounce the Fugitive Slave Law and to declare civil disobedience to it. At the annual meeting of the Fayette County Anti-Slavery Society held on April 30, abolitionists maintained that the Ohio legislature had made its "obsequious bow to Southern dictation," and that by this "BILL OF ABOMINATIONS," they were required to "restore into this Master the servant that escapes from his Master." To redress this wrong situation, the Fayette County abolitionists asked that all people should have a trial by jury, where their liberty was in question, and that all should have justice equally administered to them by the judicial courts. Regarding the Fugitive Slave Law as "an impious attempt to annul the law of the MOST HIGH, wanton outrage on the defenceless [*sic*] poor and unwarrantable disregard of the right of" their own citizens, the Fayette County abolitionists passed a resolution

[19] Ohio *House Journal: The 38th General Assembly*, February 27, 1840.

that they would "endeavor to continue to feed the hungry, clothe the naked, entertain strangers, and permit the oppressed to go free" as a way of defiance against the Black Law of Ohio.[20]

Believing that the Fugitive Slave Law was a violation of the Constitution of Ohio, common law, and the law of God, Ohio abolitionists called for open defiance against the execution of the state Fugitive Slaw Law, passing a resolution asking Ohioans not to participate in the operation of slavecatchers and slaveholders.[21] The idea of "open defiance to the new Fugitive Slave Law of 1839" emanated from the Ohio abolitionists' belief in the supremacy of moral law over positive or human-made law. The opponents of the Fugitive Slave Law justified their disobedience to it by putting the higher law above human-made laws. Primarily based on religious zeal or the rationality of the Enlightenment, this higher law argument was not new to the antislavery advocates of the 1830s and 1840s. Yet they found out that the higher law theory was powerful enough in resisting the Fugitive Slave Law. In their repeal movement, higher law arguments became the most formidable instrument with which to destroy the Fugitive Slave Law, and abolitionists continued to justify their repeal movement in a series of protest meetings, such as those of the Amesville Anti-Slavery Society, the Medina County Anti-Slavery Society, the Ashtabula County Anti-Slavery Society, the Morgan County Anti-Slavery Society, and the Salem Anti-Slavery Society.[22]

In an effort to justify the need for the state Fugitive Slave Law, the Ohio legislature presented its first formal position on the law on February 20, 1840, through the report of the

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[20] *The Philanthropist*, May 21, 1839.

[21] "Resolved, That he ought to be regarded a infamous, and an enemy to his species, who in a free state, will aid or assist the slaveholder, to any extent or in any way, in the recapture of a human being, whom he claims as his slave." Resolutions of the Ohio State Anti-Slavery Society: First Series. *The Philanthropist*, June 18, 1839; *Ohio Statesman*, June 25, 1839, January 28, 1840.

[22] *The Philanthropist*, June 25, August 13, September 3, 1839.

Select Committee on the Petitions for the repeal the Fugitive Slave Law. First of all, the Select Committee asserted that every black or mulatto person had an undoubted right of trial by jury by the present laws of Ohio. Therefore, the only person, for whom a right of trial by jury was prayed, was fugitive slave. According to the committee, while the people of Ohio were opposed to slavery, they had a constitutional duty to surrender fugitives to their masters upon proper legal procedures. The Ohio Fugitive Slave Law of 1839 provided the proper legal procedures for the rendition of fugitive slaves. In the opinion of the committee, the Fugitive Slave Law had operated without abuse or oppression and the petitioners themselves did not specify a single instance of injustice that had occurred under it. Therefore, the committee maintained, it would be a departure from the principles of sound policy to repeal the Fugitive Slave Law until further experience would have shown its defects. Denying the accusation of the abolitionists that the Fugitive Slave Law was unconstitutional and essentially oppressive, the Select Committee tried to interpret the law as a simple supplemental apparatus of the fugitive slave clause of the Constitution. However, it seemed that the committee was neither comfortable with nor certain about their report. In a sort of proviso clause, the committee opined that whether the Fugitive Slave Law was the best one to answer the requisition of the Constitution or not, time alone could determine.[23]

In spite of this gloomy report by the Select Committee on the Fugitive Slave Law, the introduction in the 38th General Assembly of a bill securing the writ of *habeas corpus* by Whig Representative James H. Godman of Marion and Crawford counties, who was later elected Auditor of Ohio on the radical Republican ticket in 1863, was promising for the Ohio

[23] The report of the Select Committee on petitions "to allow every human being the right of trial by jury and to abolish all distinctions in regard to color." Ohio *House Journal: The 38th General Assembly*, appendix, no. 6.

abolitionists.[24] The writ of *habeas corpus* is the most significant safeguard against arbitrary imprisonment in the Anglo-American legal tradition. In the antebellum United States, it permitted judges to inquire into the legality of the detention or confinement of an individual by the state or federal government. It commanded an officer detaining a person to "have the body" in court and the judges who had issued the writ determined the legality of the detention. As William M. Wiecek maintains, the writs of *habeas corpus* or *homine replegiando* to alleged fugitives might be considered "proto-personal liberty laws."[25] Therefore, it was natural that Representative Flood raised an objection to this bill, moving for its indefinite postponement. However, Democratic Representative Rufus P. Spalding of Portage County, who would join the Free Soil Party in 1850, was opposed to this motion and maintained that the writ of *habeas corpus* was a great constitutional right, intended to preserve the liberty of the citizen. It seems that Representative Spalding intended to avoid unnecessary debates by mentioning "citizens," which meant the exclusion of black people. Although Flood contended that whoever read the section of the bill could discover abolition in it, he intended no reflection on the motives of Representative Godman and withdrew his motion. This bill passed in the House but the Senate postponed discussion on it until the next session.[26]

It is unclear what the real intention of Godman was in introducing the amendment bill securing the writ of *habeas corpus* at the time of intense anti-abolitionism. Considering the

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[24] House Bill (No. 46): An Act securing the benefit of the writ of *habeas corpus*, and repealing all laws heretofore passed on that subject. Ohio *House Journal: The 38th General Assembly*, December 20, 1839; Ohio *Senate Journal: The 38th General Assembly*, January 3, 4, 6, 1840.

[25] William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848* (Ithaca: Cornell University Press, 1977), 157.

[26] Ohio *House Journal: The 38th General Assembly*, December 24, 1839; *The Philanthropist*, January 21, 1840.

opinion of Representative Arius Nye of the 39th General Assembly that the then present legal provisions relating to the writ of *habeas corpus* were comparatively worthless and that there was virtually no legal security for personal liberty,[27] however, it seems likely that Representative Godman had a similar issue with the then current writ of *habeas corpus*. At all events, Flood's suspicion of abolition turned out to be not utterly groundless. Since blacks lacked such legal protection as the right of jury trial, the writ of *habeas corpus* became the most useful and formidable instrument to protect them from slavecatchers or kidnappers in state courts. Indeed, the usefulness of the writ of *habeas corpus* would be proved in famous fugitive slave cases such as the *State* vs. *Hoppess* case of 1845 and the Oberlin-Wellington rescue case of 1859 in Ohio and the *Ableman* v. *Booth* case of 1859 in Wisconsin.[28]

While the writ of *habeas corpus* was used frequently as an antislavery legal tool to frustrate the slaveholders and slavecatchers, it does not mean that Ohio abolitionists neglected to legalize the right of trial by jury in fugitive slave case. The right of trial by jury was a core legal apparatus to contest the slaveowners' claims to alleged fugitive slaves and at the same a central provision without which to question constitutionality of the Fugitive Slave Law. As antislavery and proslavery advocates fully realized by the 1840s, the right of trial by jury was widely perceived as an important antislavery legal weapon with which to strike a blow at the slave interests directly and the institution of slavery indirectly. Accordingly, there was no room for compromise or accommodation regarding the right of trial by jury in fugitive slave cases for both sides. The institutionalization of the right of trial by jury into the state Fugitive Slave Law was tested in the next session of the Ohio legislature in which the political winds shifted and blew

[27] *The Philanthropist*, March 24, 1841.

[28] *State* v. *Hoppess*, 2 Western L. J. 279 (1845); 2 Western L. J. 333 (1845); *Ex parte* Bushnell, 9 Ohio St. 77 (1859); *Ableman* v. *Booth*, 62 U. S. (21 How.) 506 (1859).

much stronger to alter the state's Fugitive Slave Law. As the Whigs won the 1840 fall elections and had a majority in the Legislature, and, also, as only five out of seventy-eight members who voted for the 1839 Fugitive Slave Law were reelected, abolitionists eagerly anticipated repealing the oppressive law. Indeed, as a large number of petitions against the Fugitive Slave Law were presented,[29] Whig Representative Albert A. Bliss of Medina and Lorain Counties from the Standing Committee on the Judiciary,[30] to which the petitions for the repeal of the Fugitive Slave Law had been referred, made the report of the committee on the amendment of the Fugitive Slave Law. The basic conclusion of the Judiciary Committee was similar overall with that of the Select Committee of the previous session, that the obligation of the state imposed by the Constitution to deliver up fugitive slaves was undeniable and absolute. The repeal of the state Fugitive Slave Law could not release Ohioans from the obligations imposed by the Constitution. In their opinion, therefore, first, "there should be *a* law on the subject; and, Second, that the present law was *not* what it should be, but that it was much better to *amend* than to *repeal* it" (*italics* in original).[31]

Unlike the Select Committee of the 38th General Assembly, however, the Judicial Committee of the 39th General Assembly was of the opinion that the present fugitive law was

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[29] It is noteworthy that, for the first time, judges, lawyers, and others attending court in Geauga County presented their petition praying for the repeal of the state Fugitive Slave Law. The collective expression of the opinion of the judicial members on the 1839 fugitive law provided a more objective justification for the repeal of the Fugitive Slave Law. Ohio *House Journal: The 39th General Assembly*, January 13, 1841.

[30] G. Frederick Wright, ed., *A Standard History of Lorain County Ohio: An Authentic Narrative of the Past, with Particular Attention to the Modern Era in the Commercial, Industrial, Civic and Social Development : A Chronicle of the People, with Family Lineage and Memoirs*, 2 vols. (Chicago and New York: The Lewis Publishing Company, 1916), 218.

[31] "Report of the Standing Committee on the Judiciary," Ohio *House Journal: The 39th General Assembly*, 204; Middleton, *The Black Laws in the Old Northwest*, 116-28.

defective. The exact nature of the constitutional obligation was to deliver up "Not every person who is *alleged* to be a fugitive, but who *in fact* is a fugitive from service or labor…a mere *allegation* that an individual is a slave, is not sufficient to justify his being delivered up" (*italics* in original). In what manner, then, ought this question of the fact of servitude to be ascertained? In the opinion of the committee, the fact of servitude should be determined only by trial by jury. According to the members of the Committee, the affidavit of the claimant and the arrest in pursuance of it did not destroy the fact that "the legal presumption…is *always* in favor of liberty." "If so," they contended, "as far as the Judiciary throws its protection over the rights of the people, why should one color be the recipients of that protection and the other be cast beyond its pale...Is he *guilty* or *not guilty*. The fact is to be tried" (*italics* in original).[32]

In the opinion of Representative Bliss, the amendment of the Fugitive Slave Law with a right of jury trial could repair the defects in the current Fugitive Slave Law by giving fugitive slaves some legal protection. The jury would be the best agency to guarantee that only actual fugitive slaves were returned, not free blacks. The use of the jury trial would not infringe upon the legitimate rights of claimants. The amended Fugitive Slave Law would fulfill the constitutional obligation of the state in giving the claimant the advantage of a rendition process and the services of a public officer to execute it as ever. However, Representative Bliss could not get a real sense of what the right of trial by jury meant to both antislavery and proslavery advocates. It was not just a simple legal tool to examine and prevent the illegal detention of general citizens any more. Any attempt to secure the personal liberty of a black, free or unfree, meant an infringement upon the rights of claimants for southern slaveholders, and signified an

[32] "Report of the Standing Committee on the Judiciary," Ohio *House Journal: The 39th General Assembly*, 224-26; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 179-81.

insult to southern honor in that the northerners did not respect their property right and way of life relating to black slavery. As pro-slavery and conservative legislators admitted it, trial by jury in the fugitive slave case was totally incompatible with the Fugitive Slave Law. Accordingly, it was evident that the chances of amending the original Fugitive Slave Law with a right of jury trial were pretty slim.[33]

Based on the report of the Standing Committee on Judiciary, a bill to amend the Fugitive Slave Law with the right of jury trial was presented by the Judiciary Committee.[34] As expected, however, the jury trial bill was indefinitely postponed on March 18, 1841, on the motion of Whig Representative James T. Worthington, by a vote of 35 to 32.[35] Concerned about an anti-abolitionist attempt to revise the *Habeas Corpus* Act for the worse by making it applicable only to "white" citizens, Representative Nye denounced the "anti-abolition fanaticism" in the legislature. It is apparent that this "anti-abolition fanaticism" prevented the passage of the jury trial bill aiming at amending the state Fugitive Slave Law by the 39th General Assembly.[36]

It is significant that the establishment and growth of the Liberty Party were closely associated with the adoption of the state Fugitive Slave Law and the consecutive legislative

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[33] Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (Baltimore: The Johns Hopkins University Press, 1974), 93; On southern honor, see Bertram Wyatt-Brown, *The Shaping of Southern Culture: Honor, Grace, and War, 1760s-1880s* (Chapel Hill: University of North Carolina Press, 2001). Wyatt-Bertram demonstrates that racism, white freedom, and honor were "all an inseparable part of personal and regional self-definition." From this viewpoint, black freedom necessarily signified white disgrace because it put the Southerners in an equal position with black people. 199-200.

[34] House Bill (No. 119): An Act to amend an act entitled "an act relating to fugitives from labor or service from other States, passed February 26, 1839." Ohio *House Journal: The 39th General Assembly*, January 18, 19, 1841.

[35] Ohio *House Journal: The 39th General Assembly*, March 18, 1841; *The Philanthropist*, March 24, 1841.

[36] *The Philanthropist*, March 24, 1841.

failures to amend or repeal it. The transition of Ohio's abolitionist movement as "a religious enterprise" to an independent political party movement was passed through two stages. The one stage was the creation of independent political identity and idea of Ohio abolitionists from those of the American Anti-Slavery Society. At the annual convention held at Albany, New York, on July 31, 1839, the American Anti-Slavery Society led by Garrisonians set the standard for abolitionists' political action. The Albany Convention resolved: "We will never neither vote for nor support the election of any man for President or Vice President of the United States, or for Governor or Lieutenant Governor, or for any legislative office, who is not in favor of the immediate ABOLITION OF SLAVERY." But, Ohio political abolitionists took issue with the political position as a "political suicide." In their eye, voting for a candidate who was only "immediate abolitionist" was wrong in principle and inexpedient. All candidates, if elected, might properly be called upon to take important antislavery actions respecting the right of petition, slavery in the District of Columbia, the domestic slave-trade, and the admission of new slave states. And, in the case of Ohio, every candidate for the state legislature was required to provide a full support for regarding the extension of jury trial, black testimony in every case, and, most of all, the repeal of the Fugitive Slave Law. Criticizing the *Emancipator* that it regarded those questions in state as "incidental" ones, the Ohio political abolitionists maintained that they were "primary" questions in Ohio which can be settled by the legislature through the election of antislavery candidates. In order to achieve "primary" and urgent antislavery aims of repealing the Fugitive Slave Law and securing advanced legal measures for blacks' personal liberty, it was inevitable for the Ohio political abolitionists to adopt independent antislavery strategy dissimilar to that of the American Anti-Slavery Society. In the fifth anniversary convention in May 27,

1840, finally, the Ohio State Anti-Slavery Society led by Leicester King and James H. Paine resolved to give up its position of auxiliary to the American Anti-Slavery Society.[37]

The other stage was the strategic choice of the political abolitionists for separate political actions beyond their traditional strategy of working through the existing Whig and Democratic Parties with voting and political pressure. In Ohio's antislavery circle, in fact, the idea of the formation of political party armed with the doctrine of the Declaration of Independence was initiated by Bailey, one of the Liberty Party leaders in Ohio, right after the passage of the Kentucky-dictated Fugitive Slave Law. Witnessing the passage of the oppressive Fugitive Slave Law and other anti-abolitionist measures, Bailey and other abolitionists realized that both of the old party organizations were irredeemably corrupt and proslavery. A series of anti-abolitionist move of the 37th legislature must have influenced Bailey's conception of "Liberal" party considerably. Pointing out the degradation of the free states through the servility of proslavery politicians, Bailey defined the distinctive feature of the political party as "Liberalism in opposition to Servile-ism." "Without meddling with slavery in the states," the main object of the Liberal Party would be "to circumscribe the encroachment of the slaveholding power." However, it seemed that Bailey did not abandon his hope for the antislaveryism of the Whig Party completely. In addition, he did not take a risk of launching a third party movement right away because of the deep-rooted suspicion that a form of political party might result in political

[37] *The Philanthropist*, September 3, November 26, 1839, March 24, 1841; *The Emancipator*, August 8, 1839; Theodore Clarke Smith, *The Liberty and Free Soil Parties in the Northwest* (New York: Longmans, Green, 1897) 32-33; Joseph G. Rayback, "The Liberty Party Leaders of Ohio: Exponents of Antislavery Coalition," *Ohio Archaeological and Historical Quarterly* 57, no. 2 (April 1948): 166-67.

corruptness and alienation of large numbers of abolitionist. Indeed, most of the Ohio abolitionists made sure that they were still opposed to the establishment of a third party.[38]

However, the idea of separate third party was gradually taking shape among the Ohio abolitionists in the successive failures of amending or repealing the state Fugitive Slave Law by political anti-abolitionism in the early 1840s. The first obvious step towards a distinct political party was a separate nomination of James G. Birney as a candidate for the Presidency of the United States in the state-wide meeting of the abolitionists at Hamilton on September 1, 1840. The *Philanthropist* justified the separate nomination by revealing the Whig candidate William Henry Harrison's proslavery moves in the past, one of which was his important role in passing the state Fugitive Slave Law. According to the *Philanthropist,* Harrison sent "the strongest letter" to the state legislature for the Kentucky commissioners to "procure a law making it highly penal to aid or assist or refuse to arrest a fugitive from slavery" and protecting "Kentucky against the abolitionists of his own state." Indeed, the request of Kentucky was acceded to, and a law was made to meet the case through his and his friends' influence.[39] While the Ohio abolitionists' hostility to Harrison was largely due to his open hostility to the cause of abolition, it was also a huge part of their opposition in state politics that Harrison had been subservient to the slaveholding interest as revealed in his important role in adopting the Fugitive Slave Law at the request of the Kentucky commissioners.

After the separate nomination of Birney as a Liberty candidate for the Presidency of the United States, the Ohio abolitionists' idea and move to independent political action was crystallized in the successive state and local meetings. And the failures by the 39th and 40th

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[38] *The Philanthropist,* April 39, 1839, May 26, 1840; Stanley C. Harrold, Jr., "Forging an Antislavery Instrument: Gamaliel Bailey and the Foundation of the Ohio Liberty Party," *The Old Northwest* 2, no. 4 (December 1976): 372-75.

[39] *The Philanthropist,* September 22, 1840.

General Assemblies to repeal the Fugitive Slave Law of 1839 provided a decisive motive for the political abolitionists to reaffirm their conviction that they needed their independent political action and, even more, their own political party. It also gave them the opportunity to convince even the most skeptical that both parties were "broken reeds," and that it was "the merest folly to rely on either." So, the Liberty Party, as the third party organization was now styled, ruled out working through the Whig and Democratic Parties to attempt to devise means for promoting the general interests of the cause of "Equal Rights."[40] Just after the convocation of the 40th General Assembly, the Ohio State Liberty Convention, on December 29, 1841, nominated Leicester King to run for governor in the next election. Then, the Ohio State Liberty Convention clarified the political positions and programs of the Liberty Party, putting pressure on the legislature to take firm antislavery measures against several black laws and the Slave Power in the session. First, the Convention pointed out that the political power of the federal government had been constantly exerted to protect the interests of slave labor and slaveholders and to enlarge the borders of slavery. Second, it criticized that, as a result of the association of the federal government and the slaveholders, the Slave Power destroyed and trampled many fundamental constitutional rights in the process of abusing its political power. Then, the political abolitionists of the Liberty Party reminded Ohioans of the recent negative political impact of the Slave Power on the free state of Ohio, including the enactment of the Kentucky-dictated Fugitive Slave Law of 1839 and the recent mob riot in Cincinnati.[41]

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[40] *The Philanthropist*, January 13, March 24, 1841.

[41] *The Philanthropist*, January 5, 1842; Albert Bushnell Hart, *Salmon Portland Chase* (Boston and New York: Houghton, Mifflin and Company, 1899; repr. 1969), 91-92. According to Hart, this "Address" was a preliminary statement of the doctrine afterward worked out in the *Van Zandt* case of 1847: the absolute disassociation of the federal government from slavery. His doctrine led up to a climax in the often quoted sentence of the Address: "The honor, the welfare,

More than anything else, Salmon P. Chase, who drafted the address of the Liberty Convention, held that the 1839 Ohio Fugitive Slave Act was unconstitutional because it denied the right of trial by jury to persons claimed as fugitives from labor or service. While Chase disapproved of the state Fugitive Slave Law as unconstitutional, he would not go so far as to deny the fugitive slave clause of the Constitution or the federal Fugitive Slave Act of 1793, declaring that the Liberty adherents would not interfere with the restoration of fugitives on the claim of the legal owners. Nevertheless, they left room for doubt about the federal Fugitive Slave Law, contending that they would adopt a "liberal interpretation" of the constitutional stipulation because it was against liberty.[42]

Furthermore, the Liberty Convention ascribed all oppression of the constitutional rights, such as freedom of speech and the press, the right of petition, and the right of trial by jury, and all repressive laws, in Ohio, to the Slave Power and its negative political influence rather than to anti-black sentiment or racism. Thus, the repeal of the oppressive black laws and the establishment of fundamental constitutional rights such as freedom of speech and of the press, they claimed, had far from nothing to do with the removal of the Slave Power. According to them, rather, the Slave Power was the center of social disorder and of serious violations of civil liberty in Ohio. For that reason, the repeal of the oppressive Fugitive Slave Law of Ohio was the starting point to rid Ohio of political subservience to the slaveholding interest.[43]

The political identity and constitutional ideas of the Ohio political abolitionists were also developed in the antislavery actions of the antislavery lawyers and state courts as much as in

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the safety of our country imperiously require the absolute and unqualified divorce of the government from slavery."

[42] *The Philanthropist*, January 5, 1842.

[43] *The Philanthropist*, January 5, 12, 1842.

the anti-abolitionist actions of the state legislature. While lawmakers in the Ohio legislature maintained their silence in the face of the demand by abolitionists for the repeal of the 1839 Fugitive Slave Law, or counterattacked with other oppressive anti-abolitionist measures, Ohio abolitionists, antislavery lawyers, and state courts and judges persistently and patiently impeded and undermined the operation of the state Fugitive Slave Law. In the process, the Ohio state courts especially, after sizing up the situation around the unpopular Fugitive Slave Law, pursued a much more progressive interpretation in fugitive slave cases and did not waver in defense of black rights. As Stephen Middleton notes, Ohio abolitionists and its courts were operating "without guidance from the highest tribunal in the state with regard to the removal of alleged slaves." Thus, state judges were open to the considerable freedom of judicial interpretation regarding runaway slaves, and slaveholders and their agents were always uncertain as to the final decision of a case. As if validating the gravest concern of the slaveowners, the Ohio state courts showed clearly that they were not in favor of the state Fugitive Slave Law and the claims of the slaveowners in many fugitive slave cases.[44]

One of the first and most noted cases arising under the Fugitive Slave Law was that of "Black Bill" in 1839 in Marion County. "Black Bill," alias Mitchell, alias Anderson, an alleged slave, came to Marion County in the fall of 1838. He was a laborer, butcher, barber, and fiddler. Since he worked very diligently and was good-natured, his employers and other county people liked him. About July 18, 1839, a posse of citizens from Kanawha County, Virginia, arrived to claim "Black Bill" as a runaway slave of Adnah Van Bibber. "Black Bill" was arrested as a fugitive from service or labor in accordance with the Ohio Fugitive Slave Law of 1839 and jailed. He had many sympathizers and this arrest and imprisonment caused a sensation. On August 27,

[44] Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 171.

1839, Judge Ozias Bowen held that Van Bibber, the plaintiff, had failed to prove that he was the owner of the defendant, because John Lewis, a cousin of Van Bibber, had ownership of "Black Bill" at the time of escaping. However, the Virginians had no intention of giving up the fugitive slave. As soon as the decision was given, they seized "Black Bill" and threatened the crowd with pistols and Bowie knives, managing to get him into the office of a justice of the peace. With the crowd outside demanding the release of Bill, he managed to escape with the help of Judge Thomas Jefferson Anderson and went to Canada.[45]

On March 10, 1840, the Cincinnati *Philanthropist* published the "Triumph of Truth in Marion." This antislavery paper condemned the Virginians for their attempt to violently and illegally seize "Black Bill" in spite of the court's decision. The press defended Judges Bowen and Anderson and the prosecuting attorney Cooper K. Watson for their decision and defense. These men had "stood above all their enemies, head and shoulder."[46]

In 1841, in Newark, Ohio, a fugitive slave named John was apprehended under the 1839 Ohio law. The slavecatchers quickly tried to get a certificate of removal from a Licking County judge. However, abolitionist attorney Samuel White filed a motion to postpone the case. Then, he procured a writ of *habeas corpus*, which brought John to Granville for trial before progressive Judge Samuel Bancroft. White defended John, arguing that that the claimant did not have enough evidence that John had escaped from a slave state. Judge Bancroft found his argument persuasive. Finally, the court held that the arrest of the alleged fugitive, John, was unconstitutional, deciding in John's favor. Immediately, White arose and shouted, "Knock off

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[45] For the full detail of Black Bill case, see Emmett D. Preston, "The Fugitive Slave Acts in Ohio," *The Journal of Negro History* 28, no. 4 (October 1943): 437-56. Also, see Leo Alilunas, "Fugitive Slave Cases in Ohio Prior to 1850," *Ohio Archaeological and Historical Quarterly* 49 (April 1940): 175; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 170-71.

[46] *The Philanthropist*, March 10, 1840.

those shackles! No fetters here! John, you are a free man! Run, John, run for your life and liberty!" He left the United States for good to regain his freedom in Canada.[47]

In the same year, another important fugitive slave case, *In re* Mary Towns, was reported in the *Cincinnati Gazette* on May 12. Thomas Gaither, a Kentucky slaveowner, arrested an alleged slave named Rose, who was now known as Mary Towns. She allegedly escaped from a Kentucky plantation in 1831 and was charged as a fugitive slave after ten years of living as a free woman in Cincinnati. Abolitionists contested her removal from Ohio. Before she was removed, Salmon P. Chase secured a writ of *habeas corpus* from Judge Nathaniel Read. He was not that hopeful of convincing the Court that Mary Towns was a free person. However, the Hamilton County Court of Common Pleas surprisingly ruled in favor of defendant Towns. Judge Read, who, as a prosecutor, had represented the owner in the *Matilda* case, rejected Chase's natural right theory but released her on a technicality. According to Judge Read, the affidavit did not state that Towns had escaped from a slave jurisdiction and that Towns had either come into the state with the consent of her master or had later been "licensed" to remain in Ohio. In either case, she was free because "liberty is the rule, involuntary servitude the exception" in Ohio. Following the ruling in the case, Kentucky threatened to sever all economic ties with Cincinnati because of the city's liberal-leaning politics regarding African Americans. The ruling also directly contributed to inflaming Cincinnati's racial tensions, which exploded in the 1841 race riots.[48]

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[47] Henry Bushnell, *The History of Granville, Licking County, Ohio* (Columbus, Ohio: Press of Hann & Adair, 1889), 307-8; Charles B. Galbreath, *History of Ohio*, 5 vols. (Chicago: American Historical Society, 1925), 2:234; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 175-76.

[48] *Cincinnati Gazette*, May 12, June 1, 1841; *The Philanthropist*, June 16, 30, 1841; Middleton, *The Black Laws in the Old Northwest*, 149; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 178-79; John Niven, *Salmon P. Chase: A Biography* (New York: Oxford

It soon became obvious that nothing could stem the antislavery campaign of the Ohio state courts. In 1841, the Ohio Supreme Court took a decisive step, in *State* v. *Farr*, when they reversed the convictions of abolitionists who had rescued black slaves in transit with their owner through Ohio.[49] The *Farr* case was unique because it did not involve the claim of fugitive slaves or the kidnapping of free blacks. In November 1839, in Clinton County, a group of abolitionists led by Abraham T. Brooke, a long-time abolitionist, stopped some Virginians who were passing through Ohio en route to Missouri with their slaves. The abolitionists informed the slaves that they were free by Ohio law, and the slaves fled immediately. The abolitionists acted on the assumption "that by the laws of Ohio, every person claimed as a slave, becomes free upon entering her territory with the consent of his owner."[50] Virginia slaveowner Bennett Rains promptly brought charges against the abolitionists and, as a result, seventeen abolitionists were indicted on various charges of larceny, abduction, assault, battery, and riot in the Court of Common Pleas of Warren County. During the trial, the judge advised the jury that any rescue operation was illegal under the state Fugitive Slave Law of 1839, even though the Ohio Fugitive Slave Law had no specific provision in regard to slaves entering Ohio with the consent of their owners. With this specific instruction, finally, the jury decided in favor of the plaintiff and the abolitionists were convicted of riot, but they were acquitted of all other charges.[51]

University Press, 1995), 62-65; Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1980), 166-67.

[49] This case was not reported in any law reports. But it was reported and discussed in several Ohio newspapers. The *Cincinnati Gazette*, May 21, June 1, June 16, 1841; *The Philanthropist*, December 16, 1840, May 19, June 9, July 7, 1841; *Lower Sandusky Whig*, May 27, 1841.

[50] Letter of Dr. Abraham Brooke, *The Philanthropist*, December 16, 1840.

[51] *The Philanthropist*, May 19, June 9, July 7, 1841; *Cincinnati Daily Gazette*, June 1, 1841; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 177-78; Finkelman, *An*

However, the judicial move of the Ohio Supreme Court illustrated some fundamental shifts in the conception of a state's judicial sovereignty. The Warren Court decision was appealed to the Ohio Supreme Court in *State* v. *Farr*. The Ohio Supreme Court overturned the convictions because of the erroneous charge to the jury. In other words, the trial judge had erred by instructing the jury to dismiss the defense's argument that Ohio law freed the slaves automatically upon entry with the consent of the owner. However, Chief Justice Ebenezer Lane delivered the opinion of the court in dicta that a Virginia slave "became free when brought to this State by his master, since the Constitution and the act of Congress, under which alone the state of slavery subsists in Ohio, applies to *fugitives* only" (*italics* in original). According to the Supreme Court, the removal of an African American in an "attempt to carry him into a slave state" violated Ohio laws and the comity could not secure a slaveowner's interest solely because a slave and his owner were in transit.[52] Having already overturned the conviction based on the erroneous charge to the jury, the dicta of the Ohio Supreme Court was unnecessary. But the Chief Justice went out of his way to declare a rejection of comity. This legal principle of the Supreme Court would be a real threat to the property right of slaveholders regardless of the fugitive slave clause of the Constitution.

Soon after the decision, various newspapers and Ohio abolitionists hailed it as a landmark for personal liberty. The Cincinnati *Philanthropist* reported that Ohio was "redeemed from the contamination of slavery" and that the *Farr* case was "one of the most important judicial decisions ever made." The *Nile' National Register* also reported the case under the title

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Imperfect Union, 164-65; Finkelman, ed., *The Law of Freedom and Bondage: A Casebook* (New York: Oceana Publications, 1986), 73, 75.

[52] *Cincinnati Daily Gazette*, May 21, June 1, 1841; *The Philanthropist*, June 16, 1841; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 178; *Niles' National Register*, May 29, 1841.

"NO SLAVERY IN OHIO" and noted that a slave became free the "the moment he or she touches the soil of Ohio" and, thus, traveling masters would lose their slaves if they came to the free state of Ohio. At the annual meeting of the Ohio State Anti-Slavery Society, convened at Mount Pleasant, Jefferson County, on June 3, 1841, the Ohio abolitionists praised the judiciary for their antislavery decisions in the *Amistad* case,[53] in *In re* Mary Towns, and in *State* v. *Farr*. After mentioning in the fifth resolution that the decision of the United States Supreme Court in the *Amistad* strengthened their confidence in the judiciary, the Ohio abolitionists applauded in two other resolutions the decisions of the Ohio Supreme Court. The eighth resolution of the Anti-Slavery Society evinced that the *Farr* ruling was "a glorious vindication of the Constitution, and a new incentive to abolitionists to persevere in their good work, and to embrace every opportunity thus offered for breaking the yoke of the oppressor." Also, the ninth resolution of the Anti-Slavery Society announced that the Courts of Common Pleas of Hamilton and Clermont counties reaffirmed "the principle universally acknowledged in theory, but long regretted in practice, that liberty is the fundamental law, and that all laws or constitutions contrary thereto, must be rigorously constrained."[54]

Encouraged by these antislavery rulings of the judiciary, the Ohio abolitionists were convinced that this antislavery move of the judiciary would make their rescue operation more promising and at the same time the foundation of the state Fugitive Slave Law even shakier. Undergirding their conviction, the Ohio state court adjudicated on another fugitive slave case in Lorain County in the fall of 1841, in which the state court acquitted an Ohioan named Leonard Page. This case was the first attempt to convict a person under the infamous Fugitive Slave Law

[53] *United States* v. *Libellants and Claimants of the Schooner Amistad*, 40 U.S. (15 Pet.) 518 (1841).

[54] *The Philanthropist*, May 19, June 23, 30, September 1, 1841; *Niles' National Register*, May 29, 1841.

of 1839. Page, at whose house two fugitives named Jefferson and Jane were found, was indicted for harboring them on the oath of the kidnappers themselves.[55] But at his trial, Page was acquitted on several grounds. First, the trial court ruled that there was no proof that slavery existed in Kentucky. The judge said that he should assume that it did not in absence of proof. Secondly, the defendant Page did not know they were slaves. Thirdly, the defendant, Page, made no effort to conceal them. The antislavery lawyers defending Page ably argued for the unconstitutionality of the state Fugitive Slave Law. But no decision was made on its constitutionality, because, in relation to the case, there was ample ground for an acquittal without presenting their opinion on the Fugitive Slave Law.[56] However, the trial court must have had low respect for the state Fugitive Slave Law, since, in demanding proof of the existence of slavery in Kentucky, the state court disregarded the ninth section of the state Fugitive Slave Law which enjoined upon the court having cognizance of such cases to recognize the existence of slavery or involuntary servitude in the several states of the Union without proof. In this way,

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[55] It was reported in the Cincinnati *Philanthropist* under the title "Kidnapping at Oberlin," in March 24, 1841. In February 27, 1841, three Kentuckian slavecatchers and a constable named Whitney broke into the house of Leonard Page and arrested two fugitives named Jefferson, *alias* Elias, and his wife Jane. Page demanded their authority and then the constable produced a writ which had been issued by Whitney, a justice of the peace in Pittsfield, Oberlin. Supposing the writ to be legal, Page made no resistance. They left in a hurry. But they were overtaken soon by a group of Oberlin abolitionists alarmed by the possible kidnapping. Substantiating their belief, their warrant proved illegal and, consequently, the kidnappers and constable were arrested, and convicted of assaulting Page by the trial judge Heman Birch. Unfortunately, however, before this trial, the alleged fugitives also were arrested after the slavecatchers produced in due time sufficient testimony of their status of slaves of J. M. McNease in Kentucky. Even though the kidnappers were apprehended, Page was charged for harboring and employing fugitive slaves. The Reverend Samuel D. Cochran, who reported this kidnapping case to *the Philanthropist*, expected that this indictment would test the constitutionality of the state Fugitive Slave Law and, in the end, would be "the death-knell of that infamous and diabolic statute." *The Philanthropist*, March 24, 1841; Albert Bushnell Hart, ed., *American History Told by Contemporaries*, 5 vols. (New York: Macmillan Company, 1897-1929), 3: 630-33.

[56] *The Oberlin Evangelist*, 127, August, 4, 1841.

antislavery Ohio continued to assert their state sovereignty in order to prevent the intrusion of slavery into their own free territory.

It was natural that the series of antislavery rulings by the Ohio state court aroused public indignation and apprehension in the South. Their complaints targeted all forms of resistance in the Ohio state courts such as the imprisoning of slavecatchers on charges of kidnapping and the frustration of legitimate reclamation on legal technicalities.[57] Especially, southern slaveholders expressed profound alarm at the decision of the Ohio Supreme Court in *State* v. *Farr*. In Louisiana, the *Concordia Intelligencer* called for a meeting of the citizens of Concordia Parish to express their "utter detestation" of the ruling of the Ohio Supreme Court, "arraying themselves in open hostility to the rights of Southern citizens." The editor of the *Intelligencer* expressed his surprise that the press and the merchants in Cincinnati had not denounced "the absurd, the outrageous opinion of one of the State Judges, that a slave becomes free as soon as he touches the soil of Ohio." In the opinion of the *Intelligencer*, the decision of the Ohio Supreme Court was "an insult to the South" and "palpably inconsistent with the Constitution" which granted the right of property in slaves. This right, added the *Intelligencer,* was "compulsory upon the non-slaveholding States, to deliver up our slaves escaping to, or within their jurisdiction." Taking the antislavery move of the state courts of Ohio as an act of provocation and aggression, the *Intelligencer* urged the South to resort to the "right of retaliation in defence [*sic*]." Apparently, southerners felt much more threatened by the antislavery strategy of setting fugitive slaves free by legal artifice than by rescuing them by physical force. In spite of the cooperative attitude of the Ohio legislature, southern slaveowners could not cast away a serious doubt that their

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[57] Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relationships to Slavery*, completed and edited by Ward M. McAfee (New York: Oxford University Press, 2001), 225; Paul Finkelman, *Slavery in the Courtroom: An Annotated Bibliography of American Cases* (Washington, D. C.: Library of Congress, 1985), 63-63, 69.

constitutional right to reclaim fugitive slaves anywhere in the Union did not work well on the northern ground. The antislavery judiciary move of the Ohio state courts was proof enough to slaveowners that resistance to the Ohio Fugitive Slave Law of 1839 was endemic in Ohio.[58]

Even though Ohioans had maintained a consistently advocative stance towards the federal Constitution, which instructed one state to deliver up fugitives from labor or service in other states, it became manifest that the attitude of Ohioans to the fugitive slaves and the state Fugitive Slave Law was increasingly in favor of runaway slaves. As Ohioans began to conceive of the issue of fugitive slaves in terms of the danger of slavery to the nation, they came to be uncomfortable even with advertising about runaway slaves in the newspaper. So, William Penn Clark, the editor of the Logan *Gazette,* Bellefontaine, Ohio, declared he would not publish advertisements about runaway slaves, as he refused to be a slavecatcher for the South. In an editorial, Clark stated that he could not "prostitute" his columns for the purpose of recapturing a fugitive slave and added that "we are not an abolitionist by any means; but we cannot permit ourselves to be instrumental in supporting and sustaining the 'peculiar institution' of the South. While the LAWS of our State, tie up the hands of every citizen, and prohibit his assisting slaves to escape, our conscience restrains us from being accessory, in any way, to their recapture."[59] Fully aware of this change in public sentiment, immediatists and political abolitionists became more radical in their political tactics and goals, aiming at conducting a disobedience campaign and at securing meaningful legal protections for the fugitives.

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[58] *Concordia Intelligencer*, June 23, 1841.

[59] *The Philanthropist*, November 17, 1841.

While the 40th General Assembly provided an optimistic sense that the Fugitive Slave law would be repealed in the near future by showing some progressive attitude,[60] the decision of the United States Supreme Court in Prigg on Pennsylvania's personal liberty law of 1826 guaranteed the repeal of the Ohio statute of 1839 in the next legislative session.[61] Ironically enough, the *Prigg* decision, which was intended originally to crush the personal liberty laws of the free states, led to the unexpected result of the abrogation of the Ohio Fugitive Slave Law of 1839. In the decision in *Prigg* v. *Pennsylvania* in 1842,[62] the U. S. Supreme Court declared, first, that the federal Fugitive Slave Law of 1793 was constitutional; second, the Constitution's fugitive slave clause was essential to the southern states' ratification of the Constitution and

[60] The 40th General Assembly undoubtedly showed that, first, Ohio lawmakers began to believe that the gag-rule was no longer Ohioans' favorite and thus the subject of abolition was open to discussion; second, the Fugitive Slave Law was still the focus of almost every antislavery petition and agitation in Ohio; third, the antislavery forces in the legislature began to be more effectively organized as showed in their success in saving the charter of Oberlin College. Generally speaking, the change in the attitude of the legislature on issues regarding abolition reflected the rising concern over slavery and the Slave Power in the national arena.

[61] *Prigg* v. *Pennsylvania*, 16 Peters 539 (1842). The defendant, Edward Prigg, was an agent for a Maryland slaveowner named Ashmore. He sought to recapture alleged fugitives (more exactly, the daughter, Margaret Morgan, and her children, of the alleged fugitive slaves) in Pennsylvania but was refused a certificate of removal by a state magistrate. He then abducted the fugitives without compliance of the Pennsylvania's personal liberty law of 1826 and removed them to Maryland. Prigg was promptly indicted in Pennsylvania for kidnapping in violation of the 1826 law. The Supreme Court reversed the conviction and held that the Pennsylvania personal liberty law was unconstitutional.

[62] On the details and points of dispute of the *Prigg* case, see Paul Finkelman, "Prigg v. Pennsylvania and Northern State Courts: Anti-Slavery Use of a Pro-Slavery Decision," *Civil War History* 25, no. 1 (March 1979): 5-35; Finkelman, "Prigg v. Pennsylvania: Understanding Joseph Story's Pro-Slavery Nationalism," *Journal of Supreme Court History* 22, no. 2 (December 1997): 51-64; Joseph C. Burke. "What Did the Prigg Decision Really Decide?" *Pennsylvania Magazine of History and Biography* 93, no. 1 (January 1969): 73-85; Joseph Nogee, "The Prigg Case and Fugitive Slavery, 1842-1850," *Journal of Negro History* 39, no. 3 (July 1954): 185-205; Morris, *Free Men All*, 94-106; Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975), 166-68.

therefore was beyond challenge; third, the 1826 Pennsylvania personal liberty law[63] was unconstitutional because it contravened the fugitive slave clause of the Constitution's Article IV and the federal Fugitive Slave Act of 1793. In addition, Justice Joseph Story expressed the unique fourth point that the Constitution's fugitive slave clause did not oblige the states to provide police and judicial aid for the claimants in regulating the return of fugitive slaves. Since the Constitution gave Congress exclusive power over fugitive slaves, Justice Story reasoned, state governments could proclaim a waiver of constitutional obligations of chasing and returning fugitives. In short, the constitutional obligation to reclaim fugitive slaves was exclusively a federal responsibility and, therefore, the states could not be held responsible for the enforcement of the 1793 federal Fugitive Slave Act. Other points were raised in the opinions of Supreme Court Justices Story, John McLean, and James Moore Wayne. They claimed that the states could not legislate either in aid of, or against, the rights of slaveholders. In other words, the states could not enact laws that supplemented enforcement of the 1793 federal Fugitive Slave Law.[64] As a consequence of this opinion, the Ohio Fugitive Slave Law of 1839, prescribing the process of arresting and examining persons claimed as fugitives, was declared null and void.

Although the *Prigg* decision by the U. S. Supreme Court invalidated the 1839 Fugitive Slave Law, it did not allay controversies over the recapture and rendition of fugitive slaves in Ohio. Rather, the *Prigg* ruling just intensified them. Ohio's abolitionists saw little to cheer about. First of all, through the four years of the enforcement of the Fugitive Slave Law and the

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[63] "An Act to give effect to the provisions of the Constitution of the United States, relative to fugitives for labour, for the protection of free people of colour, and to prevent kidnapping." For the full analysis of this Pennsylvania law, see William R. Leslie "The Pennsylvania Fugitive Slave Act of 1826," *The Journal of Southern History* 19, no. 4 (November, 1952): 429-45.

[64] Harold M. Hyman and William M. Wiecek, *Equal Justice Under Law: Constitutional Development, 1835-1875* (New York: Harper & Row, 1982), 107-9

antislavery resistance to it, popular support for the original constitutional compromise was severely eroding. Ohioans began to doubt the original intention, and, of course, the effects of, the constitutional compromise. In the eyes of antislavery Ohioans, it was the southern slaveholding interests who had undermined the compromise by interfering with the legislations and civil liberties of the free states, by subduing Ohioans, and by coercing undue cooperation of the state officials way over the operating limits of the federal Fugitive Slave of 1793.[65]

While Ohioans were developing a strong distrust of the southern slaveholding interest in this way, the *Prigg* decision reinforced their doubts by striking a severe blow to the state's sovereignty and rights. The *Prigg* decision just reaffirmed the absolute constitutional rights of the South in regard to slavery, as claimed in the abolitionist *Philanthropist* that "the rights of the slaveholders were the only objects of constitutional protection." From Ohio abolitionists' viewpoint, accordingly, the southern slave interests would find another way to exercise their constitutional rights in regard to fugitive slaves in the free states sooner or later, even if the Ohio's Fugitive Slave Law was repealed.[66]

Second, the decision by the U. S. Supreme Court was fundamentally a serious blow to the growing antislavery movements in Ohio, not to the mention state's sovereignty and rights. It was true that the *Prigg* decision was meaningful in that it annulled the 1839 Fugitive Slave Law as an embodiment of Ohio's antiabolitionism. However, it sealed off any possibility that the Ohio antislavery advocates could produce any form of personal liberty laws that could provide

[65] Although every section of the 1839 Fugitive Slave Law was oppressive and rigorous, Section Nine of the law was especially unnecessary and bothering in the eyes of antislavery advocates in Ohio. Section Nine provided that "It shall be the duty of all officers proceeding under this act, to recognize, without proof, the existence of slavery or involuntary servitude, in the several states of this union, in which the same may exist or be recognized by law." By coercing the duty of state officials to recognize the legality of slavery, this Fugitive Slave Law provided extra-territorial position for the institution of slavery in the free State of Ohio.

[66] *The Philanthropist*, March 30, 1842.

any meaningful legal protection for fugitive slaves. Since the *Prigg* decision was fundamentally intended for the neutralization of the state personal liberty laws, Ohio abolitionists began to fear that they would not be able to secure even minimal legal safeguards to protect their own citizens, much less alleged fugitives from slavecatchers and kidnappers. Indeed, the U. S. Supreme Court did not touch the federal Fugitive Slave Law of 1793. On the contrary, the *Prigg* decision reaffirmed the constitutionality of the 1793 federal act. This federal Fugitive Slave Law was not essentially different from the state Fugitive Slave Law in that it denied major antislavery legal instruments such as the right of trial by jury and the writ of *habeas corpus* for the alleged fugitives. In short, the repeal of the state Fugitive Slave Law did not guarantee the antislavery legal instruments that the Ohio abolitionist had sought to acquire for runaway slaves.

Third, most abolitionists feared that the Supreme Court case could lead to the massive kidnapping of free blacks in Ohio. The 1793 federal act empowered slaveholders and their agents to arrest runaway slaves, who could be anyone as claimed such fugitives, without any warrant, in the free states, and to remove them to the South. This federal act also withheld the right of trial by jury from the arrested person. In addition to the complete constitutionality of the 1793 federal act, Justice Story conferred on the slaveowners and their agents exclusive privilege in their right of recapture without the aid of state legislation. According to Justice Story's interpretation, slaveowners and their agents could seize and recapture any blacks, free or fugitive, and, as a result, this ruling created a temptation to kidnapping.[67] Thus, the Cincinnati *Philanthropist* feared the impact of the *Prigg* decision on Ohio's free blacks. Pointing out "the most revolting feature of the decision" that slaveowners had in every state all the rights conferred by the local laws of their own states, namely the absolute private right of recapture, the *Philanthropist* expressed their panic like this:

[67] Finkelman, "Prigg v. Pennsylvania and Northern State Courts," 11-12.

> Let a slavecatcher from Kentucky lay hands on a free colored person in Ohio, and drag him into slavery, and how can he be punished? Congress has done nothing; Ohio is impotent; she is degraded at the foot of the kidnapper, who may now carry on his detestable business, and laugh her to scorn. Not a single legal security has a single citizen of his State, against the arts or violence the two hundred and fifty thousand slaveholders of this republic, for whose interests the sovereignty of the States and every guaranty of personal freedom must be utterly subverted.[68]

Fourth, as stated in the *Prigg* decision, "the state magistrates may, if they choose, exercise that authority [to arrest fugitive slaves], unless prohibited by State legislation." Justice Story prohibited only those state statutes designed to interfere with or to obstruct the just rights of the slaveowners to reclaim their fugitive slaves. Except for this kind of state measure, according to Story, the states, "in virtue of their general police power," could arrest and restrain runaway slaves, and state judges could enforce the federal Fugitive Slave Law.[69] Accordingly, even if the *Prigg* decision resulted in the invalidation of the Ohio Fugitive Slave Law of 1839, state police and judicial officials still had authority to seize and arrest fugitive slaves without request by the claimants. Unless the states forbade state officers from performing the duties required of them by the Fugitive Slave Act of 1793, through the adoption of certain state personal liberty laws, the invalidation of the Fugitive Slave Law of 1893 was meaningless and futile to the fugitive slaves and the Ohio abolitionists.

What was most bothering to the Ohio abolitionists was that the *Prigg* decision gave unqualified support to slavery. As Finkelman asserts, the *Prigg* case was the first Supreme Court case declaring that slavery was "a constitutionally protected institution with special privileges

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[68] *The Philanthropist*, March 30, 1842.

[69] *The Philanthropist*, July 23, 1842; *Prigg*, 625; Finkelman, "Prigg v. Pennsylvania and Northern State Courts," 9-10.

within the Union."[70] The Supreme Court re-established the common-law property right of slaveowners as a federally enforceable constitutional right by affirming the constitutionality of the 1793 federal Fugitive Slave Law. However, the Court did not stop at this. It went out of its way to declare the constitutionality of the institution of slavery. So far as slavery was recognized as an absolute constitutional institution throughout the Union, abolitionists' major strategy of localizing slavery and acquiring antislavery legislation without southern interference and pressure was just a distant hope.

In this way, convinced that the repeal of the state Fugitive Slave Law of 1839 could resolve neither fugitive slave issues nor the violation of civil liberties in their own free state, and further assured that the invalidation of it signaled just another stage in the antislavery struggle to cope with the federal Fugitive Slave Law unless securing state measures to aid in or to interfere with the recapture and rendition of fugitive slaves, Ohio abolitionists had few reasons to be sanguine about the annulment of the 1839 state Fugitive Slave Law. Rather, they began to cast well-founded suspicion that the proslavery Democrats would adopt new types of state measures regarding runaway slaves to please the southern slaveholding interest or that the decision by the Supreme Court might lead to increased Southern demands for a new Fugitive Slave Law. This concern was to be realized in the passage of the federal Fugitive Slave Law of 1850, a few years later.

The frustration and concerns of Ohio abolitionists as a result of the *Prigg* decision did not shake their conviction that the repeal of any sort of Fugitive Slave Law aimed at hunting down runaway slaves in the free territory of Ohio was justified. The response of the political abolitionists and moral abolitionists in Ohio to the *Prigg* decision was considerably different, but nevertheless almost the same in that their response was immediate and bold. On the one hand,

[70] Finkelman, "Prigg v. Pennsylvania and Northern State Courts," 10.

political abolitionists called for prompt legislative action. Reaffirming the Supreme Court decision that the states confer on their officers any power to administer or execute the laws of Congress "by direct and formal enactment," Bailey asked the state legislature to immediately adopt laws "prohibiting their officers from all interference" in the fugitive slave case, in order "to place the matter beyond all doubt." His call for state's action did not end in restricting the action of state officers. Going one step further, Bailey called on the state legislature to make it "a felony" for "any of their citizens to aid the slaveholder in any way, in arresting or recovering his slave."[71]

In an attempt to remind Ohioans of the iniquity and illegality of the federal Fugitive Slave Law of 1793 and to refute the *Prigg* decision, Bailey pointed out that the federal judges did not succeed in proving the constitutionality of the federal Fugitive Slave Law. According to Bailey, the Fugitive Slave Act of 1793 was unconstitutional because the fugitive slave clause of the United States Constitution amounted to an agreement among the "ORIGINAL" states rather than a grant of power on Congress. So, the 1793 Fugitive Slave Law needed to be amended so as to conform to the Ordinance of 1787, limiting the privileges of reclaiming fugitive slaves exclusively to the original states. In this way, by raising a doubt about the unconstitutionality of the federal Fugitive Slave Law and by calling for proper state legislation restricting state officers and general citizens in the recapture of fugitive slaves, political abolitionists in Ohio began to wage a new antislavery war against the *Prigg* decision and the federal Fugitive Slave Act of 1793, reminding Ohioans of the fact that the invalidation of the 1839 state Fugitive Slave Law was by no means the end of the problem of fugitive slaves.[72]

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[71] *The Philanthropist*, March 30, 1842.

[72] *The Philanthropist*, April 6, 1842; Stanly Harrold, *Gamaliel Bailey and Antislavery Union* (Kent, Ohio: The Kent State University Press, 1986), 58-59.

Considering the fact that the Marlborough Anti-Slavery Society had adopted a resolution criticizing the position of the Liberty Party regarding fugitive slaves as "a departure from anti-slavery principles," it is not surprising that the response of the moral abolitionists to the *Prigg* decision was more aggressive and radical.[73] First of all, the moral abolitionists reaffirmed their conviction that the complete abolition of slavery throughout the nation, not just in jurisdiction of the federal government, was the only solution to the fugitive slave issue in Ohio. At a meeting of the Stark County Anti-Slavery Society held in Marlborough, on June 17, 1842, the moral abolitionists condemned the *Prigg* decision as "another alarming instance of the determination of the slave power to control the councils of the nation." Far from being discouraged by the *Prigg* decision, they were convinced that it would provide a "new stimulus" to the abolitionists' effort to overthrow the slave system entirely.[74] The moral abolitionists did not have any doubt that the decision by the Supreme Court could help facilitate a more aggressive antislavery campaign in Ohio aimed at destroying the whole institution of slavery in the nation.

Unlike the Liberty Party advocates, who took pains to respect the Constitution and to stress political responsibility and lawful legislative solution as a political party, the moral abolitionists did not hesitate to deny the fugitive slave clause of the Constitution and to declare the positive aid of fugitive slaves. At another meeting of the Stark County Anti-Slavery Society,

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[73] At a regular meeting held in March 7, 1842, the Marlborough Anti-Slavery Society led by Garrisonian immediatists criticized strongly the recent Liberty Party Convention in that the Liberty Party advocates contaminated antislavery principles by declaring that they would not interfere with the restoration of fugitive slaves on claim of their owners. In addition, the Marlborough Society explicitly stated that abolitionists of Marlborough would not aid the slaveowners in the recapture of fugitive slaves, and also advised the southern slaves to run away from the master whenever they had a chance to do so. It is not sure that they knew the *Prigg* decision at the time of their society meeting, but it is meaningful enough that the moral abolitionists was leading the direction of the antislavery movement regarding fugitive slave in Ohio. *The Philanthropist*, January 5, April 6, 1842.

[74] *The Philanthropist*, June 29, 1842.

on September 16, 1842, the Garrisonian abolitionists, led by Edward Brooke, refused to accept the provisions of the Constitution that the people of the free states were under a federal compact to return runaway slaves to their masters in the South. From the viewpoint of the Garrisonians, the real duty of the northern people was not to follow the instruction of the Constitution unconditionally, but to disapprove of the immoral authority of the fugitive slave clause of the Constitution and to provide active help for runaways.

More radical was one of the resolutions adopted in the Convention of the Ohio American Anti-Slavery Society on October, 24, 1842. Organized by the Garrisonian immediatists, at Mount Vernon, on June 8, 1842, the Ohio American Anti-Slavery Society adopted a resolution which not only showed their determination to assist all runaway slaves but which also fully recognize the just right of slaves to run away from their masters and regain their natural right to humanity. Apparently, they incited southern black slaves to make a getaway from their masters.[75]

However, Ohio's moral abolitionists neither ignored nor neglected their duty in the repeal movement in their own state. In the same Convention of the Ohio Anti-Slavery Society in 1842, they urged antislavery advocates to petition the legislature for the repeal of the Black laws of 1804 and 1807, and the 1839 Fugitive Slave Law which became a dead letter by the *Prigg* decision. Ohio's moral abolitionists did not fail to cooperate with the political abolitionists in urging legislative action for the repeal of all black laws in Ohio, although the moral abolitionists took a more radical position regarding the fugitive slave issue.[76]

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[75] *The Philanthropist*, November 12, 1842.

[76] *The Philanthropist*, November 12, 1842.

On their part, Ohio political abolitionists denied neither their duty nor their determination to provide aid for fugitive slaves on the run. Even though political abolitionists admitted the constitutionality of the federal Fugitive Slave Law of 1793 and the constitutional recapture right of the slaveowners, it did not mean that they gave up their duty as abolitionists to help the "wretched, starving fugitive slave." Against the unfair accusation of New York abolitionist Gerrit Smith against the Ohio political abolitionist and the *Philanthropist* regarding the fugitive slave issue, Bailey retorted that "Ohio abolition…would open its doors to shelter" the runaway slave and also "would spread its table for" him. In doing so, "Ohio abolition," he declared, "would be eyes and feet to him safe beyond the reach of his pursuers."[77] As revealed in this retort, Ohio political abolitionists showed clearly that the non-interference policy in the restoration of slaves on claim of the legal slaveowners did not mean the compromising of the antislavery will and ideas. They just pursued political action against slavery. It was their conviction that repeated illegal and violent interference in the restoration of fugitive slaves would lead to undermining the reputation of the abolition movement and thus frighten off many potential recruits. Moreover, this radical interference of abolitionists might bring about unnecessary conflicts with federal and state authority. Avoiding unnecessary conflict and negative effects of such interference and at the same time pursuing lawful interference by resolute political action against the Slave Power were radical enough for the political abolitionists.

Indeed, the alignment on the issues of fugitive slaves and the personal liberty did not closely follow the fault lines imposed by political and moral abolitionism. The move into politics did not dilute the moral content of the radical antislavery program, and the denial of

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[77] *The Philanthropist*, August 27, 1842.

politics did not lead to the neglect of abolitionists' duty in the repeal movement. Quite evidently, the moral and political abolitionists in Ohio made a concerted effort to resist the oppressive federal and state policy on the fugitive slaves and to create an antislavery politics of personal liberty on the strength of growing popular opposition to the Fugitive Slave Law. Neither the antislavery forces would waver in defense of personal liberty.

By the end of 1842, furthermore, political abolitionists, who were accused of having admitted the constitutional recapture right of slaveowners by the moral abolitionists, began to show some fundamental and radical shifts in conception of the fugitive slave clause of the Constitution and slaveowners' general right of recaption. It seemed that three fugitive slave cases considerably affected the change in the political abolitionists' attitude towards the constitutional recaption right of slaveowners. The first fugitive case involved a black man who was an occasional resident of Cincinnati for several years but who was claimed as a fugitive slave on August 9, 1842. Abolitionist James Birney was one of the attorneys. Birney did his best to defend the alleged fugitive and tried to postpone the judge's decision one more day. But the Justice E. V. Brooks did not hesitate to accept all evidence offered by the claimant and to admit a major witness to testify against the black man, even if the witness confessed himself interested in the fee of a hundred dollars in his success. It came out in the open that the justice's fees were paid beforehand by the claimant and everything was in readiness to hurry off the black man at the conclusion of the trial. Indeed, the justice immediately gave a certificate of removal, regardless of the repeated requests of Birney to postpone the trial. When some abolitionists attempted to interfere with the removal of the fugitive slave, they were overpowered by a party of constables. Finally, the alleged fugitive was taken to the Covington slave depot in Kentucky and lost his freedom. Through this case, the Ohio political abolitionists came to realize again

that there were lots of unscrupulous state officers and private slavecatchers to hunt up fugitive slaves and they needed more efficient state actions for the kind of personal liberty laws controlling state officers and private slavecatchers or for the more fundamental federal action against the federal Fugitive Slave Law.[78]

The second case was the *Latimer* fugitive slave case of Massachusetts. In October, 1842, at the request of James B. Grey of Norfolk, Virginia, a Boston constable seized George Latimer as a fugitive slave under the 1793 federal Fugitive Slave Law. Latimer's counsel, Samuel E. Sewall and Amos B. Merrill, sued for a writ of *habeas corpus*, but Chief Justice Lemuel Shaw denied it after argument. The claimant, Grey, asked for time to procure evidence against Latimer from Virginia. The judge ruled that the request should be granted, and that Latimer should for the time being be held in the city jail. A writ of *personal replevin*, under the act of 1837 securing trial by jury, was then sworn out, but Justice Shaw denied the writ. After several courses of action to impede Latimer's rendition, the Boston antislavery community finally got the claimant to relinquish his claim for four hundred dollars. However, Latimer's case provoked considerable anger throughout the city and state. In response to the defending argument, Chief Justice Shaw of the Massachusetts Supreme Judicial Court held that the Massachusetts personal liberty law of 1837 was unconstitutional as far as it applied to fugitives according to the decision of the U.S. Supreme Court in the *Prigg* case and that the claim was sufficient enough to hold the man as a result of the decision. It was a case, he added, exclusively decided by the federal fugitive law and the Constitution, in which "an appeal to natural rights and to the paramount law of liberty

[78] *The Philanthropist*, August 20, 1842.

was not pertinent!" In short, the Massachusetts Supreme Court made it clear that the Constitution and federal fugitive law governed all fugitive slave cases.[79]

Latimer's case provoked tremendous anger in the ranks of the Ohio political abolitionists. As a result, it had a marked impact on their constitutional thoughts. In a critical editorial about the *Latimer* case, Bailey noted that the fugitive slave clause of the Constitution was becoming more and more "repugnant to the feelings of the people of the free states," and showed his own bitter hostility against the fugitive clause by confessing that it was "monstrous that we should consider ourselves bound to give up a man, an innocent man, seeking to escape from a galling bondage." According to Bailey, the fugitive slave clause of the Constitution was one of "notorious, abominable injustice" and thus that it ought to be repealed. Furthermore, he declared that Ohio abolitionists "abjure[d] this part of the covenant, as infamous, as impious" and would "not be bound by any such provision." Thus, he implied an outright repudiation of the constitutional obligation, which was not accepted widely, even among the Massachusetts abolitionists after the *Latimer* case.[80]

His bold denial of constitutional obligation became clearer in his response to the Clermont County kidnapping case and the resolutions adopted by the people of Clermont County. One outrageous kidnapping case occurred in Clermont, in which Kentucky kidnappers forcibly carried out of the state the wife and four children of Vincent Wigglesworth. A large protest

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[79] Asa J. Davis, "The George Latimer Case: A Benchmark in the Struggle for Freedom," Rutgers University (January 2004), < http://edison.rutgers.edu/latimer/glatcase.htm> (5 January 2004); *The Liberator*, October 28, November 4, 25, 1842; Leonard W. Levy, *The Law of Commonwealth and Chief Justice Shaw: The Evolution of American Law, 1830-1860* (Cambridge, Mass.: Harvard University Press, 1957), 78-85; Morris, *Free Men All*, 109-117; Cover, *Justice Accused*, 169, 266; Benjamin Quarles, *Black Abolitionists* (New York: Oxford University Press, 1969), 193-94; Irving H. Bartlett, *Wendell Phillips, Brahmin Radical* (Boston: Beacon Press, 1961), 116-19.

[80] *The Philanthropist*, December 7, 1842.

meeting was held right away and several resolutions were passed criticizing this kidnapping as a "daring offence and heinous crime" and calling for immediate redress. However, these resolutions were too modest, and even shameful in some respects, because, in those resolutions, the people of Clermont County supported the federal and state Fugitive Slave Laws and declared their intention not to interfere with "the right of property" exerted by the slaveowners. Pointing out that it was unnecessary for the Clermont people to champion a state Fugitive Slave Law which had been annulled by the *Prigg* decision, Bailey inveighed against a resolution admitting the "right of property" in a human being. In addition, indicating a contradiction in their resolutions which mentioned "heinous crime" and their willingness to support the federal Fugitive Slave Law at the same time, Bailey refuted them like this:

> We would ask, why is kidnapping a "heinous crime"? Does the law make it so? Can the law make it a "heinous crime," to travel over a county bridge at a faster gait than a walk? Why then is kidnapping a "heinous crime"? Because, it is reducing a MAN to the condition of a brute. No, what is slavery? KEEPING a *man* in this condition. *Slavery* and *Kidnapping* in principle, are *identical*. And what better is he, who is so full of reverence for the "heinous crime" of slaveholding, that he will aid in returning a fugitive man, to the clutches of the slaveholders?...His crime is that of kidnapping – he is but a legalized kidnapper. And yet these people boast in one resolution of their willingness to surrender up innocent fugitives from bondage – an act identical in principle with that, which in another resolution, they denounce as "heinous crime."[81]

In his opinion, clearly illegal kidnapping and slavery as a legal enslavement were one and the same. Therefore, Bailey asked Ohioans not to be legalized kidnappers by acquiescing to the cover-up of inhumane kidnapping and human hunting in the name of constitutional obligation.

Bailey continued to attack the fugitive slave clause of the Constitution in another article. Under the Constitution, slaveowners were invested with the right to recapture their slave

[81] *The Philanthropist*, December 21, 1842.

wherever they found them throughout the Union. Slavery, then, was established as a national institution. The Constitution extended the municipal law of slavery into every state of the Union, so far as to cover the case of the escaping slave, degrading the natural right and the organic law of the free states. In other words, the fugitive slave clause gave slavery what we call extra-territoriality. The fugitive slaves carried with them the legal status of slavery into a territory which did not have the institution of slavery. From his perspective, therefore, the fugitive slave clause was "one of notorious, abominable injustice." In addition, the precise duty imposed on the people of the free states by the fugitive slave clause was no less than aiding and abetting the crime of slaveholding, and the free states had committed "gross and palpable immorality" by surrendering up a fugitive slave on demand of slaveholders. So, Bailey urged that the free states should attempt to counteract the fugitive slave clause of the Constitution and make it null and void. By making it invalid, antislavery forces would be able to establish a reliable antislavery constitutionalism, that the Constitution clearly defined slavery as a local institution that depended for its existence on state law, and, consequently, the free states could have authority to hold slavery and the fugitive slave issue in check. Now, the issue of fugitive slaves and kidnapping became totally entangled with the outright abolition of slavery. Political abolitionists in Ohio, altogether with immediatists, would never abandon the issue of fugitive slaves and make it one of the major components of their radicalism until the outright abolition of slavery in the nation. In this way, by the end of 1842, Ohio political abolitionism became no less radical than the moral abolitionism regarding the fugitive slave issue.[82]

The repeal of the state Fugitive Slave Law of 1839 was just a matter of time. After the *Prigg* decision, it became virtually a dead letter because there was a clear conflict between the

[82] *The Philanthropist*, December 7, 28, 1842.

judgment in *Prigg* v. *Pennsylvania* and the 1839 Ohio law. In addition, popular opposition had intensified and the opponents of the Ohio law had long sought its repeal. Popular fury increased, culminating in December, 1842, when strong pressure was brought to bear upon the legislature for the repeal of the Fugitive Slave Law of 1839. On December 6, 1842, on the second day of the session of the 41st General Assembly of Ohio, Representative James B. Steedman introduced a bill for the repeal of the Fugitive Slave Law of 1839.[83] On the fourth day of the session, Steedman's bill passed to its third reading, when it was discussed by several House members. Judging that the repeal of the 1839 Ohio law could provide a good chance to annul the other black laws altogether, during the discussion, Whig Representative Thomas Earle of Portage County attempted to repeal the fourth section of the Black Law of 1807 forbidding the testimony of colored people in the court regarding white people by adding an amendment to Steedman's bill.[84] But this amendment was defeated by a wide margin of 12 to 59. In spite of the general consensus among legislative members on the repeal of the state Fugitive Slave Law, the legislative action of Ohio would not go so far as to accept the need to repeal every black laws in the state. Just after Earle's amendment was thwarted, Democratic Representative LeGrand Byington of Hocking, Ross, Pike, and Jackson Counties was in the forefront of the anti-abolitionist agitation to oppose Steedman's bill. Regarding the bill as a product of abolitionism, Byington promptly moved to postpone it indefinitely. After defeating this motion right away,

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[83] House bill (No. 2) to repeal an act entitled "an act relating to fugitives from labor or service from other states," passed February 26, 1839. Ohio *House Journal: The 41st General Assembly*, December 6, 1842.

[84] On the same day of the introduction of Steedman's bill, Representative Earle already presented a resolution for appointing a committee to inquire into the expediency of repealing all laws making distinctions on account of color. However, the resolution was postponed indefinitely after a short debate by a vote of 47 to 22. Ohio *House Journal: The 40th General Assembly*, December 6, 1842; *The Philanthropist*, December 21, 1842.

however, the House members passed Steedman's bill to repeal the state Fugitive Slave Law of 1839 by a vote of 46 to 24.[85]

In the Senate, also, antislavery Whig legislators made efforts to amend Steedman's bill by incorporating provisions for the repeal of part or all of the other state black laws. Senator Benjamin F. Wade, who was one of the outspoken opponents of the 1839 Ohio law, moved first to amend the bill by adding section for the repeal of the Black Laws of 1804 and 1807. But this amendment stood no chance of acceptance and failed by a vote of 6 to 30. Then, Whig Senator Seabury Ford of Cuyahoga and Geauga Counties and another Whig Senator Benjamin Stanton of Champaign, Logan, and Union Counties tried to amend the bill, by adding a provision repealing part of the 1807 Black Law, but they failed either by a wide margin of the vote.[86] Considering that the Democrats had a sizable majority in the Senate, it was not surprising that the attempts of antislavery Whig members to make a more extensive repeal act were unsuccessful. Furthermore, the margin of every vote for the amendments way surpassed the difference in the numbers of the

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[85] Ohio *House Journal: The 41st General Assembly*, December 8, 1842; *The Philanthropist*, December 21, 1842.

[86] Wade's amendment: "Sec. 3. That the act entitled "an act to regulate black and mulatto person," passed January 5, A.D., 1804; and the act entitled "an act to amend the last named act," passed January 25, A.D., 1807; and the act to amend the act entitled "an act to regulate black and mulatto persons," passed February 27, 1834, be and the same are hereby repealed."; Ford's amendment: "Sec. 3. That so much of the act passed January 25, 1807, as prevents any black or mulatto person or persons from being sworn, or giving evidence in certain cases, be and the same is hereby repealed."; Stanton's amendment: "Sec. 3. That so much of the fourth section of the act entitled "an act to amend the act entitled an act to regulate black and mulatto persons," passed January 25th, 1807, as prohibits black or mulatto persons from testifying in any prosecution which shall be instituted in behalf of this State, against any white person, be and the same is hereby repealed." Ohio *Senate Journal: The 41st General Assembly*, December 16, 1842.

two parties in the Senate.[87] It shows clearly that even though some antislavery Whig members must have regarded this session as a golden opportunity to revoke other black laws, a large numbers of Senate members had no intention of making more concessions to the abolitionists' demands. If antislavery Whig members had put more pressure on other Senate members about the amendment of Steedman's bill, they could have jeopardized the passage of the bill itself. Committing to further efforts for amending the original bill would just stop at perplexing the Democrats. They also realized that the time was not yet ripe for the complete repeal of the other black laws regarding the rights of blacks. Antislavery Whig Senators agreed to pass Steedman's bill with minor amendment from the Standing Committee on the Judiciary. Finally, the Senate passed the bill by a vote of 25 to 11 and returned it to the House.[88]

Although the antislavery Whig Senators reluctantly agreed to the passage of the repeal act, they felt that they had a last duty to do for their antislavery cause in the Senate. Therefore, they refused to be silent. After the *Prigg* decision of the U.S. Supreme Court, abolitionists had felt the need to design a personal liberty law to undermine the effective operation of the federal Fugitive Slave Law in their own state and, thus, took prompt action by sending their petitions. Moreover, the negative report by the Judicial Committee on the Clermont County kidnapping case regarding Vincent Wigglesworth's family had already stirred the antislavery Whig lawmakers' desire to promote their antislavery legislative campaign in the Senate.[89] On

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[87] The Senate was composed of 22 Democrats and 14 Whigs. But the results of the vote for the amendments of Wade, Seabury, and Stanton were 6 to 30, 9 to 27, and 10 to 26 respectively. Ohio *Senate Journal: The 41st General Assembly*, December 16, 1842.

[88] Ohio *Senate Journal: The 41st General Assembly*, December 17, 1842.

[89] On December 9, Democratic Senator James Louden of Clermont County presented the proceedings of a public meeting held in Batavia, Clermont County, on the abduction case. Anti-abolitionist Senator Joseph Bartley from the standing committee on the Judiciary responded three day later that no legislative interference was required because the existing laws on kidnapping

December 30, Senator Stanton presented the petition of Logan County citizens asking for the passage of a law to prohibit judges of the state courts and justices of the peace from taking jurisdiction in cases arising under the federal law in relation to fugitive slaves from other states. Two days later, Whig Senator Josiah Harrison of Medina and Lorain Counties supported him, presenting the same petition from Delaware County citizens. The next day, Senator Wade provided additional support, by presenting a similar but more extensive petition by the Knox County petitioners for the prohibition of the involvement of state judicial officials regarding fugitive slave cases. Unlike the other two petitions, the last petition that Wade presented was more radical in that it asked not to grant certificate of removal under the federal Fugitive Slave Act of 1793. Under the Fugitive Slave Act of 1793, a state or federal judge could issue a certificate of removal in the case where a claimant produced "proof to the satisfaction of such judge or magistrate" that the fugitives owed labor to their owner according to the laws of their home state.[90] Although the antislavery Whig Senators were unable to achieve their objective in this session, they nevertheless performed an important pioneer service.

On January 19, 1843, the Speaker of the House signed the House bill titled "an act the repeal the act entitled 'an act relating to fugitives from labor or service from other States,' passed February 26, 1839." By this repeal law, the Ohio Fugitive Slave Law of 1839 was finally repealed, and the second section of the antikidnapping law, passed February 15, 1831, was

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was sufficient for the punishment of the offence. Bailey severely criticized the report in that while the laws against kidnapping could make the case for the punishment of kidnappers, they had no provisions for the reclamation of the kidnapped person. He warned that the final refusal of the legislature to act in such a case would be equivalent to an invitation to the kidnappers to redouble their activity. Ohio *Senate Journal: The 41st General Assembly*, December 9, 12, 1842; *The Philanthropist*, December 21, 1842.

[90] An Act respecting fugitives from justice, and persons escaping from the service of their masters (Fugitive Slave Act), I Stat. 302 (1793).

revived to provide legal protection to blacks from abduction.[91] Henceforth, from 1843 to 1850, fugitive slaves in Ohio were captured and returned only under the federal Fugitive Slave Law of 1793, if at all.

The Ohio Fugitive Slave Law of 1839 remained in force for only four years. During the four years the Ohio law was in effect, it might please slaveholders in other states and facilitate the process of recapture and rendition of fugitive slaves in Ohio. However, it did not produce its desired effect, ultimately. Rather, the oppressive state Fugitive Slave Law infuriated Ohioans in general, and abolitionists in particular, by making it a crime to provide even humanitarian aid to the wretched runaway slaves, by making state law-enforcement officials slavecatchers, and finally by making the free state of Ohio a paradise for kidnappers. In the process, abolitionists were very successful in characterizing the Fugitive Slave Law as an embodiment of Ohio's subservience to the Slave Power. Antislavery Senator Morris' argument about the Slave Power was no longer a "conspiracy" to Ohioans. They believed that it was definitely proved by the adoption of the Kentucky-dictated state Fugitive Slave Law in 1839. From their viewpoint, it became obvious that the passage of the Fugitive Slave Law was the beginning of the full-scale invasion of the Slave Power to undermine Ohio's republican ideals and heritage of freedom. Therefore, one abolitionist in Ohio agitated against the Fugitive Slave Law, declaring that "While I would say to the slave-catcher…take your slave, if you can catch him – but don't ask, much less compel me, to assist in the felonious deed, '*Take your pound of flesh, but not one drop*

[91] An Act to repeal the act entitled, "an act relating to fugitives from labor and service from other states," 41 Laws of Ohio 13 (1843); An Act to prevent kidnapping, 29 Laws of Ohio 442 (1831). "Section 2 That no person or persons shall in any manner attempt to carry out of this State, or knowingly be aiding in carrying out of this State any black or mulatto person, without first taking such black or mulatto person before some judge or justice of the peace, in the county where such black or mulatto person was taken, and there agreeably to the laws of the United States, established by proof, his or their property in such black or mulatto person."

of blood'" (*italics* in original).[92] This was to show clearly that the enforcement of the state Fugitive Slave Law would encounter the determined and fierce resistance of Ohio antislavery forces. In addition, a series of fugitive slave cases under the new Fugitive Slave Law of 1839 awakened Ohioans in general, as well as Ohio abolitionists, to the substantial danger of the 1839 Ohio law and reinforced their determination to repeal the law. Also, Ohio abolitionists' usually open confrontations with slavecatchers or state law enforcement officers helped make the fugitive slave issue a primary and unflagging focus of the state's antislavery agitation and politics. Consequently, the passage of the 1839 Fugitive Slave Law, the primary purpose of which was to suppress the abolition movement in Ohio, backfired, because it did not put a damper on the abolitionists' eagerness to assist fugitive slaves but rather it awakened their sense of duty to destroy the system of slavery itself. Indeed, the Ohio Fugitive Slave of 1839 radicalized Ohio antislavery politics long before the passage of the federal Fugitive Slave Law of 1850.

Opponents of the state Fugitive Slave Law had long sought to repeal it. In the process of launching moral and political attacks on the 1839 Ohio law, they had a chance to grope for a new direction for the antislavery movement, realizing the grave danger the unconstitutional state and federal Fugitive Slave Laws posed to the free State of Ohio. Although the repeal of the state Fugitive Slave Law of 1839 was an important task for Ohio abolitionists, it would not guarantee the safety and legal protection of fugitive slaves and free blacks from the slavecatcher or kidnappers altogether. Indeed, repealing the state Fugitive Slave Law was part of the new beginning of the antislavery campaign to secure more effective and comprehensive state measures for the personal liberty of black people and for the encroachment of the slaveholding interest in Ohio. Nevertheless, the repeal of the Fugitive Slave Law of 1839 was a great

[92] *The Philanthropist*, February 5, 1839.

achievement for the Ohio abolitionist movement. Also, the repeal movement was a big stage for the intensification and radicalization of the Ohio antislavery movement for the personal liberty and the abolition of slavery in the early 1840s.

Chapter Four

"Freemen's Declaration of Independence": The Ohio Personal Liberty Laws of 1857

After the *Prigg* decision of the United States Supreme Court in 1842,[1] wherein it was declared that the federal Fugitive Slave Law of 1793 should be executed through national powers only and that state authorities were not obliged to assist in the enforcement of the law, many Northern states took prompt actions to adopt a series of personal liberty laws. A new class of personal liberty statutes took the form of laws which usually forbade state officials from participating in the arrest or return of runaway slaves and prohibited the use of state jails in fugitive slave cases. Such laws were passed in Massachusetts (1843), Vermont (1843), Connecticut (1844), New Hampshire (1846), Pennsylvania (1847), and Rhode Island (1848).[2]

State-level action in Ohio was comparatively slow and hesitant after the state Fugitive Slave Law was repealed in 1843 and even after other free states passed new personal liberty laws following the adoption of the federal Fugitive Slave Law of 1850.[3] After the 1843 repeal of the

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[1] *Prigg* v. *Pennsylvania*, 16 Peters 539 (1842).

[2] *Massachusetts Session Laws*, 1843 Chap. 69: An Act further to protect Personal Liberty; *Vermont Session Laws*, 1843 Chap. 15: An Act, for the Protection of Personal Liberty; *Connecticut Session Laws*, 1844 Chap. 27: An Act for the Protection of Personal Liberty; *Laws of New Hampshire*, 1846 Chap. 315: An Act for the further Protection of Personal Liberty; *Pennsylvania Session Laws*, 1847, 206-08, No. 159: An Act to prevent kidnapping, preserve the public peace, prohibit the exercise of certain powers heretofore exercised by judges, justice of the peace, aldermen and jailors in this commonwealth, and to repeal certain slave laws; *Acts and Resolves of Rhode Island*, 1848, 12: An Act further to protect Personal Liberty. For checklist of the Personal Liberty Laws of all states, see Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (Baltimore: The Johns Hopkins University Press, 1974), 219-22. But this checklist needs to be taken with caution because some laws in the checklist which Morris regards as personal liberty laws were actually fugitive slave laws or just kidnapping laws.

[3] An Act to relating to Fugitives from labor or service from other States, 37 Laws of Ohio 38 (1839), repr., in *The Black Laws in the Old Northwest: A Documentary History*, ed. Stephen

Ohio Fugitive Slave Law, it took fourteen more years for Ohio abolitionists and antislavery radicals to finally succeed in passing personal liberty laws in 1857. Does this mean that the Ohio abolitionists abandoned or marginalized the issue of fugitive slave and kidnapping in their antislavery movement after the success of the repeal movement of the state Fugitive Slave Law? Historian Don E. Fehrenbacher points out that the antislavery struggle over extension of slavery increasingly dominated the nature and direction of the whole antislavery movement in the 1840s and the 1850s, and as a result, that the fugitive slave issue tended to be marginalized.[4] Even if Fehrenbacher's argument is applicable to the political situation of Ohio, the question still remains how the abrupt passage of the personal liberty laws in 1857 can be explained.

Fehrenbacher's argument creates a false idea about the persistent antislavery campaign of Ohio abolitionist for the adoption of personal liberty laws, which showed no sign that it was on its last legs in the 1840s and the 1850s. Far from retreating from their antislavery struggle after the repeal of the state Fugitive Slave Law, Ohio abolitionists remained radical and committed to legal transformation of the state fugitive slave policy with unflagging enthusiasm. They had continued to regard the adoption of personal liberty laws as one of the major political strategies for the destruction of slavery and never lost their growing radicalism as expressed in the belligerent nature of personal liberty legislation. Most of all, it provides a vehicle for understanding Ohio abolitionists' commitment to the transformation of the Ohio legal mind that they were extremely sorry for the unfinished work of repealing the state Fugitive Slave Law and

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Middleton (Westport, Connecticut: Greenwood Press, 1993), 111-16; Joseph R. Swan, ed., *Statutes of the State of Ohio of a General Nature* (Columbus: Samuel Medary, State Printer, 1841), 595-600.

[4] Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, completed and edited by Ward McAfee (Oxford: Oxford University Press, 2001), 245.

antislavery attack on the "compromise" of the Constitution and the unconstitutionality of the federal Fugitive Slave Law got into its stride after the repeal of the 1839 Fugitive Slave Law.

Considering the existence of Ohio's strong commercial interests, it is quite possible that the prosouthern and antiblack elements in Ohio were strong enough to crush every attempt to adopt even moderate personal liberty laws. Further, given the conservatism of the Whigs and their frequent anti-abolitionist moves in the state legislature, it seems probable that the Whigs' fear of a personal liberty law and its radicalism frustrated antislavery forces in their campaigns to pass personal liberty laws in legislature because the Whigs harbored strong suspicion that radical personal liberty laws would create the unfolding political and economic crises between Ohio and the neighboring slaveholding states, to say nothing of threatening Unionism.

By focusing on Ohio abolitionists' efforts to adopt personal liberty laws from the repeal of the state Fugitive Slave Law in 1843 to the adoption of personal liberty laws in 1857, this chapter examines the development of Ohio's antislavery campaigns to adopt personal liberty laws securing legal protections for fugitive slaves and free blacks and challenging the unconstitutionality of the federal Fugitive Slave Laws. It also explores specifically how and why Ohio lagged behind other Northern states in adopting a personal liberty law. In so doing, it argues that anti-abolitionists' antagonism to abolitionism successfully combined with their fear of radicalism in the personal liberty legislation to frustrate the adoption and passage of personal liberty laws in Ohio until 1857. Despite this antagonism, the persistence of the personal liberty politics (including challenges to the constitutionality of the federal Fugitive Slave Law), the dissolution of the Whigs, the growth of the Republican Party, and the assertion of the states' sovereignty against the Slave Power finally broke down the walls of anti-abolitionism and led to the passage of personal liberty laws in 1857.

Ohio lagged behind other Northern states in passing personal liberty laws, but the antislavery campaigns to adopt personal liberty laws was persistent. Furthermore, it gradually radicalized antislavery politics in the state by resisting the legal slavecatching beyond illegal kidnapping. The issues of fugitive slaves and personal liberty laws paled in comparison to the burning questions of California statehood, slavery in territories, and Kansas-Nebraska Act as sectional conflicts between the North and the South were intensified. However, almost every Ohio legislature after 1843 confronted the strenuous efforts of abolitionists and antislavery radicals seeking the adoption of personal liberty laws. Even as other slavery issues grew in importance in the late 1850s, Ohio abolitionists persisted and finally succeeded in adopting their personal liberty laws. The issues of fugitive slaves and personal liberty laws gained their importance increasingly as personal liberty laws became defined as a political manifestation of the growing anti-Southern sentiment in Ohio against the aggression of the slavery interests. Ohio abolitionists intended these laws not merely to provide assistance to fugitive slaves but to undermine the system which enslaved them. The belated adoption of the personal liberty laws in 1857 dramatized the transformation of the Ohio legal mind compelled by the indomitable Ohio abolitionists.

Repeal of the 1839 Fugitive Slave Law and Its Unfinished Work

Even though the Fugitive Slave Law of 1839 was repealed in the 41st General Assembly, the original intention of the legislature for the repeal action, the gist of the repeal bill, and the way the repeal bill was passed did not bode well for the personal liberty of blacks, fugitive and free. A deep hostility among Ohio conservatives or anti-abolitionists to personal liberty legislation and a prosouthern fugitive slave policy stubbornly persisted. The repeal of the state

Fugitive Slave Law of 1839 was one of the most urgent objectives of the Ohio abolitionists because the Fugitive Slave Law bound them with legal chains, neutralizing their antislavery campaigns for rescue and aid of fugitive slaves. This law also tied state courts and police officers with the same legal chains, compelling them to enforce a more oppressive fugitive slave policy. In addition, this law made free blacks in Ohio vulnerable to kidnapping by denying them the right to be tried by a jury. With these lethal effects, this fugitive slave law made Ohio "the paradise of kidnappers" and "hunting-field" of slavecatchers.[5] For these reasons, while it was manifest that the repeal of the Ohio Fugitive Slave Law of 1839 in the 41st General Assembly of Ohio was the first, crowning achievement of the Ohio abolitionists in itself since their launching of organized antislavery movement in the early 1830s, it was an unfinished work because the repeal of the Fugitive Slave Law did not lead to the fundamental change of the state fugitive slave policy, which was what Oho abolitionist desired to achieve through the repeal.

Democrat sought repeal but any further fundamental change of the state fugitive slave policy. As a result, absent were any follow-up measures for protection for fugitive slave. Furthermore, in spite of the fact that the repeal bill was defective, abolitionists had to go along with the final form in order to secure repeal. Basically, the work of the Ohio legislature was undone in that the repeal of the Fugitive Slave Law failed to lead to an adoption of personal liberty laws similar to those of other Northern states. But, more fundamentally, it was incomplete because there were a number of serious flaws in the new act itself to repeal the Fugitive Slave Law of 1839. One historian asserts that the Ohio legislature rescinded the Fugitive Slave Law of 1839 since the legislature was "unable to deny that free African

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[5] *The Philanthropist*, November 20, 27, 1838, October 22, 1839; Benjamin F. Morris, *The Life of Thomas Morris: Pioneer and Long a Legislator of Ohio, and U.S. Senator from 1833 to 1839* (Cincinnati: Moore, Wilstach, Keys, and Overend, 1856), 237-38.

Americans were in danger because of" the fugitive slave legislation. In addition, he maintains that the Ohio legislature "revived its 1831 kidnapping law" after the repeal of the Fugitive Slave Law in order to "more effectively protect African Americans from abduction." However, his appraisal can hardly do justice to the intention of the 41st General Assembly on the repeal of the state Fugitive Slave Law. It seems that he paid too much attention to the fact of the "repeal" of the Fugitive Slave Law itself. The legislature's actions during the session suggest a quite different picture than his appraisal.[6]

Considering the anti-abolitionist history of the Democrats, there was a glaring inconsistency in the rapid legislative action initiated by the Democrats for the repeal of the Fugitive Slave Law and room for doubt both about their original intention for such action and about the final content of the repeal bill. In other words, it is predictable enough that the new act to repeal the Fugitive Slave Law of 1839 might be defective because the repeal bill was introduced from the same anti-abolitionist and prosouthern Democratic circle which had initiated and passed the Fugitive Slave Act in 1839 and which continued to dominate both Houses of the Ohio legislature at that time of the introduction of the repeal bill.[7] Moreover, even though the Democrats were under considerable pressure from many Ohioans to repeal the state Fugitive Slave Law after the *Prigg* decision, they did not have any urgent reason to repeal it right away. They could have dragged on the process of repealing the 1839 fugitive law or could even have thwarted repeal attempts in the Democratic-controlled legislature. However, the Democrats

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[6] Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio* (Athens, Ohio: Ohio University Press, 2005), 181.

[7] In the 41st General Assembly, the Senate was composed of 22 Democrats and 14 Whigs and the House of Representative was comprised of 40 Democrats and 32 Whigs. *Ashtabula Sentinel*, October 29, 1842; *The Philanthropist*, December 7, 1842.

chose to introduce the repeal bill almost at the same time of the opening of the new session before the Whigs did it.[8]

Most of all, the Ohio Democrats expressed their resentment that Ohio had not been adequately rewarded for the favor she did to Kentucky. While the Ohio Democrats gave the Kentucky slaveholders active and full state support for more effectual recapture and removal of fugitive slaves by passing the Kentucky-dictated Fugitive Slave Law, they judged, Kentucky returned evil for good by instigating the influx of blacks into Ohio deliberately, which was believed to engender social and political conflict and confusion. Indeed, what the Democratic Representative James B. Steedman, who introduced the repeal bill of the state Fugitive Slave Law, stated about his original intent showed clearly that the Democrats' purpose in repealing the state Fugitive Slave Law lay neither in humanistic ideals nor in the unconstitutionality of the fugitive slave legislation. In the process of repealing the law they made no mention of the *Prigg* decision. After introducing the repeal bill, Representative Steedman wanted to clarify his position on the repeal bill. Without bringing up questions of slavery, slavecatchers, or human liberty, Representative Steedman insisted that the state Fugitive Slave Law should be repealed in revenge for the baleful influence of Kentucky because the state had kept sending "nigger, or not exactly niggers, but vagrants," bringing about social problems. Without interfering with the domestic concerns of Ohio by sending blacks into Ohio, he thought, the State of Kentucky should take care of her "negroes, without calling for the aid of a party [Ohio], which has been treated in bad faith." In an almost same vein, the Democratic Representative LeGrand Byington from Pike County voiced his discontent that while the Fugitive Slave Law was originally passed

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[8] *Journal of the House of Representatives of the State of Ohio: The 41st General Assembly*, December 6, 1842; An Act to repeal the act entitled, "an act relating to fugitives from labor and service from other states," 41 Laws of Ohio 13 (1843), repr., in *The Black Laws in the Old Northwest*, ed. Middleton, 129.

in "a spirit of comity and magnanimity towards an adjoining State," Ohio had been given in return "political vagrants, mendicants, and emissaries" – blacks and perhaps exiled white abolitionists such as John G. Fee and Cassius Clay.[9] In short, Steedman and Byington regarded the fruits of the 1839 Fugitive Slave Law as a betrayal of comity.[10]

From the viewpoint of the antislavery circle, by contrast, the state Fugitive Slave Law should be repealed because it was unjust and unconstitutional. For the abolitionists, it was a matter of right and wrong, not of state relations. The *Philanthropist* lamented, "A pretty confession truly, that for the last three years, Ohio has been the negro-keeper, the overseer of the Kentucky slaveholder! And then, think of the honorable motive [of the Representative Steedman]…not because the office of slave-catcher and negro-keeper was disgraceful to Ohio – not because the Black Act was a violation of humanity – but we are determined to be revenged of

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[9] Reverend John G. Fee was born in 1816 in Bracken County, Kentucky. He became an abolitionist against his family's belief. With the help of Cassius M. Clay, he and his wife started an interracial and coeducational school and antislavery church at Berea. He and other educators were the target of many angry mobs, and in 1859 he and his family were exiled to Cincinnati, Ohio. Cassius M. Clay was born on October 19, 1810 at Clermont near Richmond, Kentucky. Although Clay was raised by one of the largest slaveholders in Kentucky, he was influenced by William Lloyd Garrison and became an outspoken abolitionist. He spoke out against slavery and fought for the gradual emancipation of slaves, freeing his slaves in 1844. He was the owner and editor of *The True American*, an antislavery paper published in Lexington from 1845-1847. His critical opinions regarding slavery did not meet with much approval. In 1845 a mob seized the press of *The True American* and shipped it north to Cincinnati. On Cassius's life and antislavery activities, see Cassius Marcellus Clay, *The Life of Cassius Marcellus Clay: Memoirs, Writings, and Speeches, Showing His Conduct in the Overthrow of American Slavery, The Salvation of the Union, and the Restoration of the Autonomy of the States*, 2 vols. (Cincinnati, Ohio: J. Fletcher Brennan & Co., 1886); David L. Smiley, "Cassius M. Clay and John G. Fee: A Study in Southern Anti-Slavery Thought," *The Journal of Negro History* 42, no. 3 (July 1957): 201-13; H. Edward Richardson, *Cassius Marcellus Clay: Firebrand of Freedom* (Lexington, Ky.: The University Press of Kentucky, 1976); Betty Boles Ellison, *A Man Seen But Once: Cassius Marcellus Clay* (Bloomington, Ind.: AuthorHouse, 2005); Keven McQueen, *Cassius M. Clay: Freedom's Champion* (Paducah, Ky.: Turner Pub., 2001).

[10] *Ashtabula Sentinel*, December 14, 1842; *The Philanthropist*, December 21, 1842; *Ohio State Journal*, December 8, 1842.

Kentucky, for sending her orators here, to aid Whigs! Mean, mean, to the last degree! That law was either *right* or *wrong* – if right, no petty resentment against Kentucky could warrant its repeal. If wrong, no comity could sanction it, and its repeal ought to be insisted on, just because it is wrong. Legislatures degrade themselves, and violate every rule of right, when they suffer their acts to be dictated by caprice, passion, or spite." Moreover, the 1839 Fugitive Slave Law was designed to crush the aiding or rescuing activity of the abolitionists for fugitive slaves and, ultimately, to undermine abolitionism itself in Ohio. Indeed, the major point of the opposition to repeal of the state Fugitive Slave Law was a deep concern that such repeal would reinvigorate abolitionism.[11]

In spite of the opposition of the hard-line anti-abolitionists, however, the Democratic circle kept its legislative majority together to support the repeal of the state Fugitive Slave Law. It was probable that the *Prigg* decision of the U. S. Supreme Court must have been a burden to the Democratic circle because it declared the state fugitive slave legislation to be unconstitutional. However, it was apparent that they judged that the repeal of the 1839 Ohio law would not have a crippling impact on efforts to return fugitive slaves because the federal Fugitive Slave Law of 1793 remained in effect. Unless the federal Fugitive Slave Law were repealed and, furthermore, the Ohio legislature took a follow-up measure for the personal liberty of fugitive slaves, the repeal of the state Fugitive Slave Law could not by itself make a huge difference in the Ohio fugitive slave policy.

Knowing exactly what was needed to improve the fugitive slave situation, Ohio Libertyites in convention at the end of 1842 called on the state legislature to emulate the example of Massachusetts and Pennsylvania and to "follow up its right action in the repeal of the Black

[11] *Ashtabula Sentinel*, December 14, 1842; *The Philanthropist*, December 21, 1842.

Act of 1839 by prohibiting all state magistrates and officers, under suitable penalties, from taking any cognizance of cases of fugitives from service, or acting in any way in behalf of claimants of such fugitives under the act of 1793." In the same Convention, Salmon P. Chase, one of the Liberty leaders, stressed the need for forceful execution of writ of habeas corpus of the state courts as a legal safeguard for the alleged fugitive slaves. If strict proof of the slaveholders' claim were required and if the alleged fugitives were presumed free without such proof, "few or no fugitives could be claimed," Libertyites claimed. G. W. Ells also put a particular emphasis on the adoption of a follow-up personal liberty law providing fugitive slaves with a jury trial and right of testimony.[12]

However, the Democratic-dominated legislature understood these facts equally well. Democrats had no intention of passing any advanced personal liberty legislation for fugitive slaves. Even the conservative or moderate legislative members who supported the repeal of the state Fugitive Slave Law, to say nothing of the anti-abolitionist members, indicated their clear stance against the adoption of a new personal liberty law. For these reasons, in the 41st General Assembly, in which otherwise antislavery legislators could have intensified their efforts to adopt

[12] Even before the repeal of the state Fugitive Slave Law, Ohio abolitionists realized the absolute need of a more advanced personal liberty law which would be able to maximize the effect of the repeal the state Fugitive Slave Law. Therefore, Ohio antislavery strategists called on abolitionists to petition for the adoption of a personal liberty law, recommending a form of petition for it as follows: To the General Assembly of the State of Ohio – Your memorialists, citizens of ___ County, respectfully ask, that the judges, justices of the peace, and other magistrates of this State, may be prohibited under the same penalties, as are imposed by the act of Pennsylvania, passed 25th of March, 1820, from taking any jurisdiction or granting any certificate under the 3d section of "an act respecting fugitives from justice, and persons escaping from the service of their masters," passed by Congress February 12, 1793, for the following reasons among others. 1. Because Congress cannot rightfully impose any duty or confer any power on State magistrate, and the attempt to do so is a palpable invasion of state sovereignty; 2. Because State magistrates are appointed to do justice among freemen, and are degraded and made unfit for the performance of their appropriate duty, by acting under said law for compensation, to be paid by the claimants who invoke their aid, and this under powerful temptations to be instruments of injustice. *The Philanthropist*, November 12, 1842, January 11, 1843.

a personal liberty law similar to those of other northern free states right after the *Prigg* decision of the U. S. Supreme Court, they could not take the risk of frustrating the repeal of the state Fugitive Slave Law of 1839 by pushing too much for the adoption of a more aggressive personal liberty law.

Indeed, antislavery efforts to adopt additional reform measures must have been frustrating for the anti-abolitionist legislators who were already unhappy and disgruntled about the introduction of the repeal bill. In the 41st General Assembly, facing the strong possibility of the repeal of the Fugitive Slave Law of 1839, some anti-abolitionist legislators took action in revenge for the imminent repeal, bringing about the bill for the repeal of the charter of Oberlin Institute.[13] Furthermore, antislavery legislators' every attempt to amend the original repeal bill by inserting sections for the repeal of all, or part of, the sections of the Black Laws of 1804 and 1807 and to make a personal liberty law prohibiting the cooperation of state officers in the recapture of fugitive, was thwarted by concerted efforts of the anti-abolitionist and conservative legislators. While admitting the necessity of the repeal of the Fugitive Slave Law of 1839, most of repeal advocates in the legislature made clear their intention that they were unwilling to make more concessions to the abolitionists' demands. Consequently, antislavery legislators could not but stop at repealing the Fugitive Slave Law of 1839.[14]

It is evident that if the Democrats had thought that the repeal of the state Fugitive Slave Law would undermine the interests of slaveholders or contribute to the welfare of the blacks, they would not have passed it. A closer look into the repeal bill reveals how ineffective it was in

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[13] Ohio *House Journal: The 41st General Assembly*, December 6, 1842; *The Philanthropist*, December 21, 1842; *Ohio Statesman*, December 13, 1842; *Ohio State Journal*, December 14, 1842.

[14] Ohio *Senate Journal: The 41st General Assembly*, December 16, 30, 31, 1842; *Ashtabula Sentinel*, December 31, 1842.

protecting free blacks or alleged fugitives from kidnapping, as the Whig Representative Thomas Earl of Portage County pointed out in his minority report on the petitions for the repeal of black laws.[15] At least the state Fugitive Slave Law contained an antikidnapping section, defining kidnapping and prescribing its penalty.[16] However, the repeal bill only revived the second section of the 1831 antikidnapping law which prescribed the manner of legal rendition as compatible with "laws of the United States."[17] So clear was the intention of the legislature that it would not make any repeal bill contravening the *Prigg* decision of the U. S. Supreme Court. The restoration of the second section of the 1831 antikidnapping law in the repeal bill was meaningless and ineffective in protecting blacks against kidnapping unless the first and third sections of the 1831 antikidnapping law were revived, too. Yet the first section of the law, defining kidnapping, and the third section, providing the penalty for such offence as well as for that prohibited in the second section, were not revived. As Representative Earl maintained, it seemed "as if it were the design of the Legislature, to do all they could do to aid the slaveholding

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[15] "Report of the Minority of the Select Committee, on the subject of the Colored Population, on the petitions of citizens of this State, praying the repeal of all laws, creating distinctions on account of color; - in House, Feb. 24, 1843. Presented by Thomas Earl." *The Philanthropist*, March 22, 1843.

[16] "If any person or persons shall in any manner attempt to carry out of this state, or knowingly be aiding in carrying out of this state, any person, without first obtaining sufficient legal authority for so doing, according to the laws of this state or of the United States, every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not less than three, nor more than seven years." The eleventh section of "An Act to relating to Fugitives from labor or service from other States," 37 Laws of Ohio 38 (1839).

[17] "No person or persons shall in any manner attempt to carry out of this State, or knowingly be aiding in carrying out of this State, any black or mulatto person, without first taking such black or mulatto person, before some judge or justice of the peace, in the county where such black and mulatto person was taken, and there, agreeably to laws of the United States, establish by proof his or their propriety in such black or mulatto persons." The second section of "An Act to prevent Kidnapping," 29 Laws of Ohio 442 (1831).

tyrant, and as little as they could to protect the people against kidnappers." Without defining kidnapping, slavecatchers could kidnap blacks in Ohio under any excuses. Without prescribing penalty for kidnapping and illegal rendition, Ohio could not protect her people against kidnappers in case they refused to obey the second section of the repeal bill. After the repeal bill was passed, Ohio was without a single law against slavecatchers and kidnappers. As a consequence, the need for personal liberty legislation against the federal Fugitive Slave Law of 1793 became more urgent to provide legal protections for blacks, fugitive and free.[18]

Antislavery Attack on the unconstitutionality of the Fugitive Slave Law of 1793

After the repeal of the Fugitive Slave Law in 1843, Ohio abolitionists increasingly focused their attention on the iniquities of the federal Fugitive Slave Law of 1793 and on the resulting necessity of the effective personal liberty laws which would relieve state judges and law enforcement officials from the obligation to enforce the 1793 Fugitive Slave Law within the Ohio's borders. The National Liberty Convention at Buffalo, presided over by Leicester King, lent weight to the efforts of the Ohio Libertyites to invigorate the personal liberty politics in Ohio, by making an introductory statement that the fugitive slave clause of the Constitution was void since it was against natural right, and by passing a resolution that every free state legislature ought to adopt "suitable statutes rendering it penal for any of its inhabitants to transport, or aid in transporting from such State, any person sought to be thus transported merely because subject to the slave laws of any other State." A few month later, the Ohio State Liberty Convention reaffirmed the Ohio Libertyites' antislavery constitutionalism by adopting a number of resolutions including condemnation of the federal Fugitive Slave Law of 1793 and denunciation

[18] "Report of the Minority of the Select Committee...Presented by Thomas Earl." *The Philanthropist*, March 22, 1843; *Ashtabula Sentinel*, April 1, 1843.

of the state legislature being apathetic about kidnapping. In the ninth resolution, the Ohio Libertyites asked for immediate repeal of the federal Fugitive Slave Law of 1793 because it was "the bloody and unconstitutional act of Congress," "which makes humanity a crime and takes away the right of trial by Jury in a most important class of cases, and subjects every person black or white, who may be claimed as a fugitive slave, to be dragged out of the state…upon the bare certificate of an irresponsible Magistrate." In the eighteenth resolution, they denounced the Ohio legislature for taking no firm actions in spite of frequent kidnappings and illegal detentions of Ohio citizens by slavecatchers and the Southern authorities. While the Ohio political abolitionists of the 1830s were very cautious in openly denouncing the fugitive slave clause of the Constitution or the federal Fugitive Slave Law of 1793, by the 1840s they did not hesitate to declare them void and null or to condemn the federal fugitive slave policy in the 1840s.[19]

From the early 1840s on, Ohio Libertyites insisted that all legislation upholding slavery was void since it violated every person's natural rights.[20] As such a piece of legislation, the 1793 Fugitive Slave Law became a target of the Ohio Libertyites after the repeal of the Ohio Fugitive Slave Law in 1839. From 1843 until 1850 several significant cases contributed to make an elaborate attack on the legality of the 1793 Fugitive Slave Law. A major case was *Jones* v. *Van Zandt* which arose from increased abolitionist activities and efforts to aid fugitive slaves in southern Ohio after the destruction of an antikidnapping law. The case is important in that Ohio abolitionists highlighted the iniquities and unconstitutionality of the 1793 Fugitive Slave Law

[19] *The Philanthropist*, September 27, 1843, February 14, 1844.

[20] The Liberty Party adopted this legal idea formally in its 1848 platform on the basis of the theories of Lysander Spooner in *Unconstitutionality of Slavery* (1845).

effectively by blending moral principles with legal arguments and, consequently, elaborated their antislavery constitutionalism based on the authority of the Judiciary.[21]

In April 1842, while returning to his farm near Cincinnati abolitionist John Van Zandt encountered a group of nine blacks who had escaped from Kentucky into Ohio and offered them a ride in his wagon. However, before long he and nine blacks were overtaken by two slavecatchers who caught all but one of the slaves. Upon returning the slaves to slaveowner Wharton Jones, the slavecatchers were paid a mandatory $450 reward under a Kentucky law. Jones then sued Van Zandt for the whole damages and for harboring and concealing fugitive slaves, under the provisions of the Fugitive Slave Law of 1793. Noted attorney-politician Salmon P. Chase defended Van Zandt in the trial before Justice John McLean of the United States Circuit Court at Cincinnati in July, 1842.[22]

One of core arguments for Van Zandt was that he could not have known that the blacks he encountered were actually fugitives, since no one informed him of the fact of their escape. Chase asserted that the 1793 Fugitive Slave Law required such notice and that without notice Van Zandt could not be charged with the crime of aiding fugitive slaves, nor be liable for any damages or any other penalties. Furthermore, Chase argued that the act itself was unconstitutional because the act of 1793 violated the due process clause of the Fifth Amendment and the jury trial provisions of the Seventh Amendment. But his defense did not work out. The

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[21] *Jones* v. *Van Zandt*, 13 F. Cas. 1040, 1045-57 (C.C.D. Ohio 1843), *aff'd*, 46 U.S. (5 How.) 215 (1847).

[22] Paul Finkelman, *Slavery in the Courtroom: An Annotated Bibliography of American Cases* (Washington: Library of Congress, 1985), 70-75; Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: The University of North Carolina Press, 1981), 245-48; Leo Alilunas, "Fugitive Slave Cases in Ohio Prior to 1850," *Ohio Archaeological and Historical Quarterly* 49 (April 1940): 180-82; *The Philanthropist*, July 19, 1843; *Liberty Hall*, August 10, 1843.

jury hearing the case in federal court in Cincinnati ruled in Jones's favor. This case eventually reached to the U.S. Supreme Court, and future Secretary of State William Henry Seward assisted Chase in Van Zandt's defense. However, the U.S. Supreme Court reaffirmed the decision against Van Zandt, on March 5, 1847.[23]

Even though the ruling held that Van Zandt had violated the 1793 Fugitive Slave Law, the charge and opinion of Judge McLean in the federal circuit court attracted considerable attention from the Ohio antislavery circle because of their implications and also in that there had been no judicial opinion on question involving slavery except that of the Supreme Court in the *Prigg* decision. Fundamentally, McLean's opinion on slavery question was pro-freedom. First, McLean's charge to the jury supported the proposition that slavery was local in its character. According to the Judge McLean, slavery depended on the municipal law of the state where it was established, and if a person held in slavery went beyond the jurisdiction with the consent of master, the person became free. Second, recaption had been named as a common law remedy. But the remedy could not be pursued beyond the sovereignty where slavery existed and in another jurisdiction which had no compact to surrender fugitives. The remarks of the Supreme Court in regard to surrender of captured slaves in the *Amistad* case were made due to the treaty

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[23] Salmon P. Chase, *Reclamation of Fugitives from Service. An Argument for the Defendant, submitted to the Supreme Court of the United States, at the December Term, 1846, in the Case of Wharton Jones vs. John Van Zandt* (1847; reprint, Freeport, N.Y.: Books for Libraries Press, 1971); Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 195-96; Finkelman, *Slavery in the Courtroom*, 70-75; Finkelman, *An Imperfect Union*, 245-48; Alilunas, "Fugitive Slave Cases in Ohio," 180-82; *Ashtabula Sentinel*, August 26, September 2, 9, 1843. In his appeal to the U.S. Supreme Court, Chase once again pointed out the absence of formal "notice," the nature of "harboring or concealing," and illegality of the federal Fugitive Slave Law of 1793 contravening the Ordinance of 1787 and the Constitution. But the Supreme Court in its decision against Van Zandt ruled that the notice in the form of formal writing by the claimant was not necessary and the knowledge of the defendant that the blacks was a fugitive from labor or service was sufficient to charge him even though he may have gained the knowledge from the fugitives. In addition, the Supreme Court clarified the crime of harboring a fugitive slave and the affirmed the validity of the federal Fugitive Slave Law of 1793.

with Spain. Third, the Constitution treated slaves as persons. Whether slaves were referred to in it, as the basis of representation, as migrating, or being imported, or as fugitives from labor, they are spoken of as persons. Fourth, slavery was admitted by almost all to be "founded in wrong, in oppression, in power against right." Fifth, everyone in Ohio, or any other free state, without regard to color, was presumed to be free. Sixth, the principle was recognized that "the commission of a crime, or an agreement to commit an unlawful act, does not constitute a good consideration. *Any contract is void which rests upon such a basis*" (*italics* in original). These pro-freedom implications of McLean overturned the opinions of the Supreme Court in the *Prigg* case considerably, which reaffirmed the principles of slavery such as the justification of fugitive slave clause in the Constitution and the absolute right of recaption. The reinterpretation of the character of Constitution as an antislavery document made abolitionists so encouraging. From McLean's implications, the Ohio abolitionists reached to an antislavery inference that the spirit and letter of the Constitution repudiated the idea of slavery and that slavery was founded in wrong, in oppression, in power against right. As a result, Ohio abolitionists deduced antislavery constitutionalism from McLean's charges and opinions.[24]

Although *Jones* v. *Van Zandt* is regarded chiefly as a Supreme Court decision in which a harsh construction of the federal Fugitive Slave Law was sustained, the case and the Judge McLean's pro-freedom propositions provided authoritative source for the abolitionist to examine the constitutionality of the Fugitive Slave Law of 1793. Drawing encouragement from McLean's comments about the spirit and letter of the Constitution, the Ohio abolitionists elaborated their antislavery constitutionalism – their view that any clause of the Constitution, which conflicted with its general spirit and letter and was designed to give a certain specified

[24] *The Philanthropist*, July 26, 1843; Finkelman, *An Imperfect Union*, 245-48.

support to slavery, ought to be construed with the utmost strictness, and that any law framed to carry into effect such a clause ought to be construed in the same way. From this antislavery standpoint, such clause in the Constitution existed in the second section, the fourth article of it, which was labeled the fugitive slave clause. Based on the strict construction of the fugitive slave clause -- that it just asserted the right of a claimant and secured the delivery of the person claimed as a fugitive slave against adverse law or illegal force -- the 1793 Fugitive Slave Law created at least two offences beyond the scope of the clause it was intended to enforce: "harboring" and "concealing." Ohio abolitionists argued that the Constitution said nothing about harboring or concealing fugitive slaves, giving conveyance or charity to them and that, therefore, the federal Fugitive Slave Law of 1793 was unconstitutional.[25]

The influence of the *Van Zandt* case and its alleged pro-freedom principles were considerable. By building on them, Ohio abolitionists succeeded in elaborating the antislavery characteristics in the Constitution based on the common law principles. Unlike Garrisonian abolitionists, who denounced the Constitution as a hopeless proslavery document, Ohio political abolitionists began to re-imagine the proslavery federal instrument as an antislavery instrument. Gradually, political abolitionists came to formalize the pro-freedom propositions in the *Van Zandt* case in their political resolutions and guiding principles. About two months after the decision in the federal circuit court, the National Liberty Convention at Buffalo reaffirmed the principle of common law recognized by the Judge McLean in the *Van Zandt* case, which was "that any contract, covenant, or agreement, to do an act derogatory to natural right is vitiated and annulled by its inherent immorality," and declared the fugitive slave clause in the Constitution was absolutely void. In the Ohio State Liberty Convention, in addition, the Ohio Libertyites

[25] *The Philanthropist*, July 26, 1843; Finkelman, *An Imperfect Union*, 248.

vowed not to abide by "any judicial construction, or legislative enactment to do any act repugnant to the principles of natural justice, and the plain provisions of the fundamental law of the United States." Furthermore, they stressed the importance of a Judiciary which "will boldly and honestly administer Justice, observing always the time-honored maxim of the Common Law, 'He is to be held impious and cruel who does not favor Liberty.'"[26]

The Urgent Need for Personal Liberty Laws and the Failed Legislative Attempts to Pass Them in the 1840s

In the light of such developments as the destruction of the antikidnapping law, the occurrence of influential fugitive slave case such as the *Van Zandt* case, and the persistent antislavery attacks on the constitutionality of the federal Fugitive Slave Law of 1793, the Ohio antislavery circle made an attempt to secure personal liberty legislation in the 43rd General Assembly. In this session the Democrats had a majority in the Senate while the Whigs had the control of the lower house. In December, 1844, a bill was introduced by Whig Representative Robert F. Paine of Portage County[27] to prohibit any judge, justice of peace, or other magistrate of Ohio from acting officially in the delivery of fugitive slaves, and also, any executive officers or citizens of Ohio from aiding in the seizure, arrest, detention, or imprisonment in any state jail or other state building, of such fugitives.[28] As historian Thomas D. Morris has pointed out, this bill

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[26] *The Philanthropist*, September 27, 1843, February 14, 1844.

[27] Robert F. Paine studied law with U.S. Representative Daniel Rose Tilden and later served as county prosecutor. With Tilden, he also organized an Abolition Society at Garrettsville which was believed to be the first of its kind in Portage County. Paine would be a delegate to the Republican National Convention from Ohio in 1860.

[28] House Bill No. 54: "For the protection of personal liberty, and to repeal the second section of an act entitled 'an act to prevent kidnapping,' passed February 15, 1831." Ohio *House Journal: The 43rd General Assembly*, December 21, 1844.

was radical enough even when compared to the personal liberty laws of the other northern states by seeking to obtain total noncooperation which prohibited any citizen, not just officials, from providing any assistance to slaveowners and their agents to reclaim a fugitive slave. Because of its extreme nature, it seemed that its chance of passing both houses was pretty slim.[29]

However, two cases supplied an additional justification for the urgent adoption of state personal liberty legislation after the introduction of Paine's bill in the House. The first case was an attempt to kidnap a black named Henry Colwell at Brown County. On February 1, 1845, five slavecatchers broke into the house of Mrs. Lucy Henry and seized Colwell as a runaway. They claimed that his name was Lewis, a runaway from Kentucky and quickly left with him. A rescue crew was immediately organized and followed the slavecatchers in a hot pursuit. Before the slavecatchers could be overtaken, however, they had come to the conclusion that they had mistaken their man. So, the slavecatchers let him go and quickly returned to Kentucky. The *Philanthropist* denounced this case as an outrageous crime and stressed the need of immediate and effective state personal liberty legislation. The abolitionist newspaper stated:

> Until the Legislature interpose, and punish severally all attempts on the part of the citizens of this State, or its officers, to seize, or aid in the seizure of alleged fugitives, we shall be continually exposed to the depredations of vagabonds from other States, who, having no honest means of subsistence, live upon the price of blood. The truth is, the Legislature must interfere, or our citizens cannot be restrained a recourse to violent measures against a set of scoundrels, who are greater foes to the peace of our commonwealth, than so many wild beasts.[30]

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[29] Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (Baltimore: The Johns Hopkins University Press, 1974), 124.

[30] *The Philanthropist*, February 5, 1845.

Convinced that the absence of a personal liberty law in their state brought about frequent illegal kidnappings, Ohio abolitionists called on the legislature to take a prompt action for securing legal protection of African Americans.

The second case was *State* v. *Hoppess*.[31] This case involved the slave-transit question. Hoppess had been travelling with his slave, Samuel Watson, on a steamboat that docked temporarily in Cincinnati. Soon after the boat had docked, Watson got off but was seized by Hoppess in the evening. Chase obtained a writ of habeas corpus, arguing that Watson had become free when he entered Ohio with the consent of a master. While Judge Nathaniel Read in the Ohio Supreme Court agreed with Chase on the automatic freedom principle based on the consent of master in the slave-transit, he nevertheless concluded that Watson was a fugitive and could not be freed since if a boat, with slave and master aboard, should stop at any point in Ohio, even temporarily for any other purpose, connected with the voyage, that act did not dissolve the relation between master and slave.[32]

In spite of the reaffirmation of the pro-freedom principle in slave transit by the Ohio Supreme Court, what most bothered Ohio antislavery advocates in this case was that the Court again called the Act of 1793 constitutional. In an elaborate legal argument, Chase contended that the federal Fugitive Slave Law was unconstitutional because, first, it authorized an unreasonable seizure without warrant, second, it attempted to clothe with judicial power persons not officers of the United States Government, and third, it was repugnant to the Ordinance of 1787. Ohio abolitionists paid special attention to the second argument about the unconstitutional judicial power of the magistrate. The federal Fugitive Slave Law provided that a certificate of removal

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[31] *State* v. *Hoppess*, 2 Western Law Journal 279 and 333 (1845).

[32] Finkelman, *An Imperfect Union*, 167-72; Alilunas, "Fugitive Slave Cases in Ohio," 177-79; *The Philanthropist*, February 12, 1845.

could be granted on a summary examination before magistrate who has no authority to summon witnesses or detain for safe-keeping the party claimed. In the case of Samuel Watson, Ohio abolitionists became especially indignant at state magistrate Mark P. Taylor, who made out a certificate of removal to the claimant based on the oral testimony of claimant and other affiants that Watson was the slave of Floyd in Virginia and that Watson admitted that Hoppess was his master. In the view of Ohio abolitionists, Taylor's action was not only unconstitutional but also contravened the decision of the U.S. Supreme Court in the *Prigg* case that neither any citizen, lawyer, magistrate, constable in the State, nor the legislature, was under any obligation to act in aid of the claims of the slaveholder. Ohio abolitionists maintained that the state legislature should clearly prohibit their magistrates from any interference in the fugitive slave case by passing personal liberty law. Considering that the elaborate attack upon the constitutionality of the Fugitive Slave Law of 1793 was not successful in the federal courts, the need of state personal liberty legislation to secure legal protection for African Americans came to seem more pressing.[33]

All in all, the introduction of a personal liberty bill by Representative Paine was timely, offering the Ohio legislature a chance to reassess its fugitive slave policy. Two severely conflicting reports from the Standing Committee on the Judiciary were submitted concerning this bill, which revealed the duplicity and self-contradiction of the Whig-controlled lower House of the 43the General Assembly over fugitive slaves. The report of Whig Representative Joseph J. Coombs of Jackson and Gallia Counties, on behalf of the majority of the Committee, was decidedly prosouthern and anti-abolitionist. The report virtually contended that it was the duty of the free State of Ohio to aid the slaveholders in recapturing their slaves and that Ohio had no

[33] Alilunas, "Fugitive Slave Cases in Ohio," 178; *The Philanthropist*, February 19, 26, 1845.

power to enact the bill in question. Representative Coombs and the majority of the Judiciary Committee of the House of Representatives asked: first, "Is it constitutional?" and second, "Is it expedient?" The reply to the former question constituted their report, and, to the latter, they thought it needless to give any answer. Their position and argument were contained in the following extract:

> "The court [The U.S. Supreme Court], therefore, was unanimous in the opinion, that no state has power to pass any law which shall in any way qualify, impede, or obstruct the right of the owner to his fugitive slave under the constitutional provision, or to qualify, impede, or obstruct the remedy enacted by congress on that subject. This authority, to the majority of your committee, seems conclusive against our constitutional right to enact such a law as is proposed by the bill under consideration; and we scarcely deem it necessary to fortify this position by any elaborate arguments."

In their judgment, therefore, the state legislature could not prohibit state magistrates from acting officially in the delivery of fugitive slaves. Rather, the states were specifically bound to lend a positive aid in the recapture and restoration of fugitive slaves, upon "the principle of compromise and guaranty," in the Constitution.[34]

The minority report of Representative Paine took a completely opposite stand. It upheld the sovereignty of the states. It vindicated the supreme claims of liberty and regarded slavery as an odious exception, to which nothing was to be granted of comity. The first part of it was devoted to an elaborate argument to show that Congress could not "by legislative enactment under, and by virtue of, the Constitution of the United States, confer power upon, and regulate the action of, magistrates elected under the authority of, commissioned in compliance with, and responsible for their official conduct to, the constitution and laws of the state of Ohio." But

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[34] "Report of the Majority of the Standing Committee on the Judiciary, on House Bill No. 54 [In House, February 25, 1845]," Ohio *House Journal: The 43rd General Assembly, Appendix to House Journal*, 45-55.

Congress had attempted to do this in the act of 1793. What then was the duty of the States? Should their magistrate be left at liberty to exercise the unconstitutional power in violation of the principles of their own institution? The answer was "No!" If Congress trampled upon the states' rights, the states were bound to resist the assumption "by correct legislation." This "would not be opposition to the nation's rights, but a proper and legitimate vindication of their own."[35]

As a just vindication of states' rights, therefore, Paine called for legislation based upon "the principles of universal freedom and equal rights." "Color," said Paine, "gives no foundation for a new distinction between right and wrong. That word has no place in the category of human liberty." Although the Constitution permitted the slaveholders and their agents to retake escaping slaves, Paine did not want the free soil of Ohio to be defiled by "the feet of the human hunter." So, he declared,

> Their [slave hunters'] rights are Shylock rights, and their success is the death of liberty. Let those who exercise them be careful that they take nothing but flesh; above all, let not the magistrates or officers, or citizens, be permitted to degrade the state by degrading themselves into instruments for the slave hunter. Neither let our prisons or dwellings be made dishonorable by the incarceration of a human being charged with no other crime than a pilgrimage from slavery to a land of freedom.[36]

In addition, the provisions of the bill under consideration were not unreasonable. According to Paine, they did not deny to the claimant any rights which the Constitution secured to him, but merely required the citizens of the state to abstain from all participation in slave-hunting – it proposed to make such participation as criminal as it was admitted by every man's conscience to be. He concluded by citing the personal liberty laws of Massachusetts and Maine,

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[35] "Report of the Minority of the Standing Committee on the Judiciary, on House Bill No. 54, for the protection of personal liberty, & c. [In House, February 25, 1845]," Ohio *House Journal: The 43rd General Assembly, Appendix to House Journal*, 56-63.

[36] "Report of the Minority…for the protection of personal liberty," 63-64.

and asking "Why not follow their examples?" However, the majority of the Ohio legislature did not pay attention to the arguments of Paine, and he managed to postpone the further consideration of the bill until the first Monday of the next December.[37]

Accusing the Whigs of hypocrisy, Ohio abolitionists sharpened their criticism of, especially, the Whigs on the failure to pass the proposed personal liberty law in the Whig-controlled legislature. Since the Whigs had claimed that they were true liberty force in the previous Presidential election campaign, attacking the Liberty Party, it was clear for the Libertyites that the majority report by Whig Representative Coombs represented just another justification for their independent political organization by reaffirming the conservatism and anti-abolitionism of the Whigs.[38]

In July 1845, the infamous Parkersburg case made more urgent the adoption of a personal liberty law in the next legislature.[39] A gang of slavecatchers from Virginia captured three Ohio abolitionists and six alleged fugitive slaves and forcibly took them to Virginia. The Ohio abolitionists were imprisoned in the jail at Parkersburg on the charge of enticing and aiding six slaves to escape. Since it was evident that the slavecatchers abducted the Ohio citizens illegally and no Virginia Court could try Ohio citizens for acts done in Ohio, however, this Parkersburg affair caused quite a stir in Ohio, not to mention especially in the antislavery circles, as a gross example of the assault upon the sovereignty of Ohio by the State of Virginia. Therefore, Ohio abolitionists held a series of public meetings around the state to protest against

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[37] "Report of the Minority…for the protection of personal liberty," 63-65; Ohio *House Journal: The 43rd General Assembly*, March 7, 1845.

[38] *Cincinnati Weekly Herald and Philanthropist*, March 12, 1845.

[39] *Commonwealth* v. *Garner*, 44 Va. 624 (1846); *Cincinnati Gazette*, July 9, 1846; *Cincinnati Weekly Herald and Philanthropist*, July 23, August 6, 13, 20, December 31, 1845.

the aggression of the Virginia slaveholders. On July 24, in Cleveland, a mass protest meeting was held to condemn the seizure and abduction of Peter Garner, Crighton J. Lorain, and Mordecai Thomas, three citizens of Ohio within its territory. Marietta abolitionists also convened a protest meeting to denounce the aggression of Virginia slaveholders. In Logan County, Ohio Libertyites held a convention, declaring that the abduction of three Ohioans by Virginia slavecatchers was but "a continuation of the intolerable aggressions of slaveholders on behalf of slavery." In Dayton, Logan County and West Milton, Miami County, furthermore, Ohio Libertyites criticized Governor Mordecai Bartley for failing to interfere promptly for the protection of his citizens and for being negligent in taking immediate action for the punishment of the Virginia kidnappers. At last, the Ohio legislature came to adopt a House report which recommended a resolution criticizing the State of Virginia for the forcible seizure and illegal detention of three Ohio citizens.[40]

The Parkersburg affair and the growing concern about personal liberty and state sovereignty provided another chance for adopting a personal liberty law in the legislature. Therefore, Whig Representative Thomas C. Shreve of Portage County introduced a bill further to protect personal liberty.[41] In spite of the favorable atmosphere created by the Parkersburg affair and the bill's moderation in comparison to the previous personal liberty bill of 1844, this bill met a similar fate in the 44th General Assembly. About two weeks later after the introduction of the

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[40] Salmon P. Chase to Caleb Emerson, Cincinnati, September 16, 1845 in *The Salmon P. Chase Papers: Correspondence, 1823-1857*, ed. John Niven (Kent, Ohio: Kent State University Press, 1995), 117-18; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*,187-90; *Cincinnati Weekly Herald and Philanthropist*, July 23, August 6, 13, September 17, October1, November 26, 1845; "Report of the Committee on Federal Relations, Respecting the Kidnapping of Certain Citizens of This State [In House – February 16, 1846]," Ohio *House Journal: The 44th General Assembly, Appendix to House Journal*, 44- 47.

[41] House Bill No. 21: "Further to Protect Personal Liberty," Ohio *House Journal: The 44th General Assembly*, December 8, 1845.

Shreve's bill, Democratic Representative Clement L. Vallandigham from the Standing Committee on the Judiciary reported back the bill and recommended that the further consideration of the bill be indefinitely postponed. On February 14, the House determined the indefinite postponement of the personal liberty bill by a vote of 42 to 16.[42]

While the extreme nature of the personal liberty bill in the previous legislature primarily contributed to the failure of its adoption, it was more than anything else the conservatism or the pro-southernism of the Whigs which frustrated the passage of Shreve's more modest personal liberty bill. Actually, the Whig Party did not hesitate to join Ohio abolitionists in their protest against the violation of the sovereignty of Ohio by the Virginia slaveholders and authorities in the Parkersburg affair. In the Portage County Whig Convention, the Whigs took a firm stand against slavery and its extension, resolving that the abduction and trial of three Ohio citizens was an "atrocious trespass upon the rights of our citizens and the sovereignty of our State, which demands decided and energetic action on the part of our State authorities for redress."[43] However, no distinction of parties was recognized in the legislature. The general action of the Whigs in the legislature was as much reactionary as those of the Democrats as shown in the Whigs' initiatives to thwart the antislavery effort to repeal the Black Laws of 1804 and 1807.[44] There was no exception in dealing with Shreve's bill for the protection of personal liberty. The

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[42] Ohio *House Journal: The 44th General Assembly*, December 8, 9, 23, 1845, February 14, 1846; *Cincinnati Weekly Herald and Philanthropist*, December 31, 1845.

[43] *Cincinnati Weekly Herald and Philanthropist*, October 1, 1845.

[44] The House of Representatives of Ohio postponed indefinitely the discussions of three House bills (no. 126, 199, and 201), all of which dealt with the repeal of part of the Black Laws of 1804 and 1807. The *Ohio Statesman*, the Democratic Organ, contended that because the Whigs constituted almost two-thirds of the House, the whole responsibility of carrying or defeating repeal laid with the Whigs. Ohio *House Journal: The 44th General Assembly*, January 9, 10, 26, 29, 30, February 2, 3, 9, 10, 26, 1846; *Cincinnati Weekly Herald and Philanthropist*, February 18, 1846.

majority of the Whigs in the Judiciary Committee and House showed their determination not to infringe upon the slavery interests.

In some sense, it came as no surprise that the report from the Judiciary Committee was negative about the personal liberty bill, since the report had been made by Representative Vallandigham, "a champion of Democracy." But it was surprising to Representative Shreve that the Whigs, who constituted the majority of the Committee and claimed that they were "true Anti-Slavery Party," agreed to commit the bill to "the tender care of the abettors of slaveholders." Representative Shreve said that this bill simply proposed to prohibit under a suitable penalty the magistrate and other civil officers under the authority of the State of Ohio from aiding "the slave-hunter in his robber [*sic*] efforts to arrest and remand to the great prison house of slavery the fugitive when overtaken on our professedly free soil" and also "to forbid the use of our jails to the dealer in human flesh." As the *Cincinnati Philanthropist* maintained, however, the personal liberty bill proposed to do a great deal. It proposed to "prohibit Ohio from wearing the livery of the slaveholder," and attempted to "take the bread out of the mouths of not a few of [Ohio] magistrates and constable, who seem to be under the impression that the people of Ohio elected them to office just to enact the part of staunch blood hounds to the slave-hunter." Even though Representative Shreve softened the provisions of the personal liberty bill of the previous legislature, even the softened measure appeared to be still threatening to the slavery interest in the eyes of conservative Whigs and prosouthern Democrats, and they did not hesitate in casting their dissenting votes for the personal liberty bill.[45]

There can be little doubt that despite, or all the more because of, consecutive failures to adopt personal liberty laws in the legislature, the concern about protection of individual freedom

[45] *Cincinnati Weekly Herald and Philanthropist*, March 18, 1846.

was growing in the late 1840s and the crime of kidnapping horrified many Ohioans. To make matters worse, another kidnapping case added fuel to the fire. On March 31, 1846, before the horrible memory of the Parkersburg affair was gone, the abduction of Jerry Phinney, a black resident of Columbus for more than a decade, took place, putting lots of Ohioan into shock. Phinney was a slave in Kentucky, who was hired out to a gambler named Allgaier. In 1830, Allgaier brought Phinney to Cincinnati and kept him there several months against the terms of his contract with Sara Long, the owner. Under the threat of suit from Mrs. Long for breach of contract, Allgaier returned Phinney to her. She then permitted Phinney to return to Cincinnati for his personal items. Upon reaching Cincinnati Phinney disappeared and refused to return to Kentucky. Almost sixteen years later, Alexander C. Forbes and Jacob Armitage lured and seized Phinney and took him to Kentucky under the certificate of removal by magistrate William Henderson.[46]

As many Ohioans organized a series of public meeting condemning the kidnapping of Phinney, Ohio Governor Bartley asked Kentucky Governor William Owsley for the arrest and extradition of two kidnappers. However, Owsley chose instead to try the case in Kentucky and the Franklin County Circuit Court took the case. Ohio responded by sending an Attorney General William Johnston to argue for the extradition. Despite the Ohio and other precedents, which showed Phinney was in fact free, the Kentucky Court decided that he was still a slave and

[46] *Weekly Ohio State Journal*, April 1, 8, 15, 29, May 6, 27, 1846; *Cincinnati Weekly Herald and Philanthropist*, April 1, 8, 15, 22, 1846; Stephen Middleton, "Law and Ideology in Ohio and Kentucky: The Kidnapping of Jerry Phinney," *Filson Club Quarterly* 67, no. 3 (July 1993): 347-72; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 190-95; Finkelman, *An Imperfect Union*, 172-74.

Forbes was authorized to capture Phinney as a fugitive slave. Therefore, the Court refused to allow the extradition of Forbes and Armitage as kidnappers.[47]

Unsurprisingly, Ohio abolitionists viewed the incidence of the Jerry Phinney affair as a natural consequence of legislative failures to pass personal liberty laws in the last two legislatures. Therefore, it was not simply the slaveholders and slavecatchers in the South but also the Whig and Democratic Parties in Ohio who should be blamed for this Phinney affair, since both party members were negligent in fulfilling their obligation to adopt personal liberty laws to protect their citizens. To be more exact, in the eyes of Ohio abolitionists, this incident was a combined work of "heartless policy of the Legislature," "the cowardly silence of the Press," and "the vile prostitution of too many ministerial officers" of Ohio, along with Kentucky slaveholders and slavecatchers. First, state legislature rejected every proposition to repeal the laws that oppressed the African Americans and exposed them to the assault of the slaveholders, and virtually "licensed the dirty work of slave-catching" by refusing to pass a bill to prohibit state magistrate and constables to interfere in the business of arresting fugitive slaves and by allowing state jails to be used for the purposes of the slavecatchers. Second, there was single Whig or Democratic press in Ohio which had informed to its reader that neither citizen nor state officers was bound by any law to aid or abet slavecatching and which had urged the legislature to pass laws prohibiting state officers or citizens from voluntarily or involuntarily cooperating with slavecatchers in recapturing fugitive slaves. Third, state magistrates had been in the habit of extending all legal convenience to slavecatchers, and city constables had been hired regularly to hunt runaway slaves. Both these classes of officers had acted voluntarily – "of their own free will and accord" – without any obligation being laid upon them, and "never in virtue of their

[47] William Johnston, *The State of Ohio vs. Forbes and Armitage: Arrested upon the Requisition of the Government of Ohio, on Charge of Kidnapping Jerry Phinney, and Tried before the Franklin Circuit Court of Kentucky, April 10, 1846* (Frankfort, KY.: S. N. 1846).

official character." Since the violence and aggression of slavery was inevitable as showed in the Jerry Phinney case and other kidnapping cases, it was absolutely necessary, if the free State of Ohio would prevent the recurrence of these disgraceful assaults upon personal liberty, to inflict tough punishment on the criminals by adopting personal liberty laws in the legislature.[48]

As the public sentiment in Ohio changed much since the time of the Watson case,[49] the state legislature needed to reestablish its state policy concerning fugitive slaves. Contrary to Ohio abolitionists' expectations, however, the attitude of the legislature remained ambivalent at best. At first, the legislature took a bold step in the antislavery direction. After years of halfhearted attempts to repeal the Black Laws, a House Select Committee condemned the laws as inhuman, unconstitutional, and unequal. At the same time, the legislature demanded that slavery be excluded from Oregon and any other territories the United States might annex.[50] But, this resolute antislavery move of the legislature did not reach to make any substantive changes in regard to fugitive slave policy. After presenting many petitions asking for the adoption of personal liberty laws, Whig Representative Harrison G. Blake of Medina County, from the Select Committee to which the subject was referred, reported a personal liberty bill (H. No. 175) at the beginning of 1847. This measure was designed to prohibit Ohio officials from using the state facilities for the reclamation of fugitive slaves.[51] However, the Judiciary Committee

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[48] *Cincinnati Weekly Herald and Philanthropist*, April 1, 1846.

[49] After *State* v. *Hoppess* (1845), the Ohio Judiciary reaffirmed their antislavery trend in the Jerry Phinney case. As historian Paul Finkelman holds, the Jerry Phinney case is significant primarily as an indication that by 1846 the executive and the judiciary in Ohio fully accepted the antislavery doctrine that once a slave entered the free soil of Ohio by the consent of the slaveowner, he or she became free, and were ready to act according to the theory of law, in spite of profound racial attitude of Ohio. Finkelman, *An Imperfect Union*, 174.

[50] Ohio *House Journal: The 45th General Assembly*, January 2, 1847.

recommended an indefinite postponement of consideration of the bill and, finally, the Whig-controlled House supported the judgment of the Committee by a vote of 41 to 20.[52] It seems very clear that, in spite of obvious change in public sentiment and the opinion of the Judiciary in favor of fugitive slaves and state sovereignty in the mid-1840s, the legislature still regarded the alteration of prosouthern fugitive slave policy and the adoption of personal liberty law as much more uncomfortable and dangerous than any other antislavery measures in state.

This ambivalent attitude of the legislature became clearer in another legislative attempt to amend the law authorizing the writ of habeas corpus. Whig Senator William L. Perkins of Lake and Ashtabula Counties, from the Standing Committee on the Judiciary, reported a bill amending an Act Securing the benefit of the writ of habeas corpus of 1811 in the Senate.[53] In the House, Democratic Representative Warren P. Noble of Seneca County introduced another amendment bill of the writ of habeas corpus a few days later.[54] Considering the unusual situation of introduction of similar bills about same subject from both Houses, it was not difficult to infer that there must have been a conflicting interest in, or desperate need for, the amendment of the 1811 habeas corpus law.

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[51] House Bill No. 175: "to more effectually prevent kidnapping in the State of Ohio, and to prevent the jails in the State from being used to confine persons claimed as fugitive slaves," Ohio *House Journal: The 45th General Assembly*, January 22, 1847.

[52] Ohio *House Journal: The 45th General Assembly*, February 5, 1847.

[53] Senate Bill No. 136: "Further to amend the act entitled 'an act securing the benefits of the writ of *habeas corpus*,' passed February 22, 1811," Ohio *Senate Journal: The 45th General Assembly*, January 26, 1847.

[54] House Bill No. 251: "to amend an act entitled 'an act securing the benefits of the writ of *habeas corpus*,' passed February 22, 1811," Ohio *House Journal: The 45th General Assembly*, February, 1, 1847.

Actually, Ohio antislavery activists in the legislature had attempted to amend the habeas corpus law since the 43rd General Assembly because they thought that the existing habeas corpus act was utterly inadequate to the object it was designed to accomplish – the protection of personal liberty against illegal confinement or detention.[55] It was the 43rd legislature in which the first major attempt by antislavery activists for amending the 1811 habeas corpus act was made in earnest. In February 1845, Whig Representative Robert F. Paine introduced a bill to revise the 1811 habeas corpus act, which made clear the execution of the writ by sheriff or coroner, the effect of the return as evidence, the safe-keeping of the person alleged to be illegally imprisoned or detained, and the duty of recording all proceedings.[56] While the bill passed the House without difficulty, it encountered major resistance from anti-abolitionist lawmakers in the Senate. As soon as the bill was brought up for discussion, Democratic Senator David D. Disney of Hamilton County argued that the sole object of the bill was to enable the abolitionists of Ohio to steal the slaves of Southern travelers on the Ohio River, and moved the indefinite postponement of it. Taking similar grounds in his opposition to the bill that had been maintained by Senator Disney, Democratic Senator William H. Baldwin of Clermont County contended that this bill would be of no benefit whatever to the whites and added that its only effect would be to

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[55] Ohio abolitionists pointed out the defects of the 1811 *habeas corpus* act as follows: 1) It directed the writ to the person, whether sheriff and private person, charged with illegally detaining another, so that is was often, and might be, almost by private persons, disregarded with impunity 2) it made no provision for the costs of proceedings and was therefore unjust to clerks, officers, and parties 3) it did not provide for the safe keeping of the party alleged to be under illegal restraint. Thus, in that case where controversies were necessary, the party having custody was liable to be deprived of his right by force or fraud, and the party in custody, was exposed to the danger of being withdrawn by force from the protection of the law 4) It made no provision for recordings under it 5) It did not declare what should be the effect of the return. *Cincinnati Weekly Herald and Philanthropist*, March 12, 1845.

[56] House Bill No. 300: "to amend the act entitled 'an act securing the benefits of the writ of *habeas corpus*,' passed February 22, 1811," *Ohio House Journal: The 43rd General Assembly*, February 14, 1845.

drive the people and the commerce of the South from the shores of Ohio by rendering them embarrassed and annoyed by the provisions of the act. In an effort to refute their accusation, Senator William L. Perkins of Ashtabula and Lake Counties and Thomas W. Powell of Delaware and Marion Counties attempted to justify the necessity of the passage of the bill by providing some cases in which free blacks had been carried out of the Ohio and doomed to slavery because of the imperfections of the old law, but to no avail. In the end, the bill failed to pass in the Senate by a vote of 17 to 11.[57] Given that the bill passed the House without any trouble, it seems apparent that the content of the bill left little room for anti-abolitionist accusations. As revealed in the opposition of the anti-abolitionist Senators, however, the majority of the Senate showed clearly that they still would not take a risk of offending the slavery interest in any way by touching the fugitive slave issue or even the issue of kidnapping free blacks in Ohio.

By 1847, the Whig-dominated legislature realized that it could not blindly adhere to its longstanding prosouthern fugitive slave policy. In spite of the successive domination of the legislature, because of their repeated empty pledges to take an open and public stand in opposition to slavery and all legislative oppression, the Whigs were given a warning from abolitionist that the Whigs should not seek to obtain the vote of the people on false pretences.[58] They could not ignore the abolitionists' warning and sought to placate antislavery forces by at least revising the old habeas corpus law, though not by adopting personal liberty laws similar to those of other Northern states. Of course, the prosouthern or conservative legislators did not have any intention of giving up their deep-rooted fugitive slave policy favoring southern slaveholders completely. Rather, they just aimed to place an effective curb on the growing

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[57] Ohio *Senate Journal: The 43rd General Assembly*, March 5, 1845; *Cincinnati Weekly Herald and Philanthropist*, March 12, 1845.

[58] *The Philanthropist*, February 17, 1847.

antislavery or antisouthern sentiment by making a little concession to antislavery forces. Nevertheless, the introduction of two different bills amending the 1811 habeas corpus act from each House meant that the hard-core anti-abolitionists would not take even one step back, or that there was a considerable conflict of opinions among the prosouthern or conservative legislators concerning to what extent they had to make a concession to antislavery elements in the legislature. One thing was clear. They would not jeopardize their amicable relationships with the slavery interest in the South.

The final choice of the legislature was the Senate version of the bill, which was authored by Whig Representative Perkins who had taken a lead with Representative Paine in adopting the amendment bill of the old habeas corpus act since the last legislature. This Senate version included almost all provisions of the amendment bill of the last legislature which failed to pass in the Senate. In spite of the similarity of the two amendment bills of the 44th and 45th legislatures, the 45th legislature could not but pass the amendment bill of the old habeas corpus act since it could no longer ignore the growing antislavery or antisouthern sentiment of Ohioans which resulted from frequent occurrence of outrageous fugitive slave cases. Nevertheless, in other sense, it is not hard to infer that the amendment bill was moderate from the perspective of the conservatives because it must have failed to pass if it was radical no matter how deteriorating the public sentiment was. In short, the amendment bill was acceptable to the conservatives in the legislature. One of core provisions of the bill underscored its moderation and ambivalence. The eighth section read:

> That upon the return of a writ of habeas corpus, issued as aforesaid, if it shall appear that the person detained or imprisoned, is in custody under any warrant or commitment in pursuance of law [the federal Fugitive Slave Law], the return shall be considered as prima facie evidence of the cause of detention; but if the person so imprisoned or detained is restrained of liberty, by any alleged private authority, the return of said writ

> shall be considered only as a plea of the facts that therein set forth, and the person claiming the custody shall be held to make proof of such facts; and upon the final disposition of any case arising upon a writ of habeas corpus, the court or judge determining the same shall make such order as to costs as the case may require.[59]

In one sense, this section was moderate, or even reactionary, particularly in that it went against Ohioans' growing hostility to the federal fugitive slave law. In others sense, this section was ambivalent since while it reflected some antislavery demands for a real protection of personal liberty, it also included a major prosouthern demands for a real protection of the property right of the slaveholders. As historian Morris points out, Ohio reversed the antislavery trend in the growth of habeas corpus practice by prohibiting the state writ from being used as a process to provide for a full evidentiary hearing if a person was claimed under federal fugitive slave law.[60] While this new habeas corpus law set down a stricter standard against the reclamation without recourse to the law, it reaffirmed the slaveowners' absolute right to fugitive slaves. In a certain way, the new habeas corpus act of 1847 might provide some legal protections at least for free blacks in Ohio against scattershot kidnappings. In this respect, the 45th Ohio legislature might make an unintended mistake of passing a new habeas corpus act because the writ of habeas corpus would be more active legal apparatus to check the activities of slavecatchers in the 1850s. However, the Ohio legislature showed clearly that it would not make any concession to antislavery forces in regard to fugitive slave issues, and would demonstrate its determination to maintain prosouthern fugitive slave policy by frustrating again the antislavery

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[59] Joseph R. Swan, *Statutes of the State of Ohio, of a General Nature, in Force January 1st, 1854: With References to Prior Repealed Laws* (Cincinnati: H. W. Derby & co, 1854), 454.

[60] Morris, *Free Men All*, 125.

attempt to pass a personal liberty law proposed by Whig Representative Harrison G. Blake of Medina County by a vote of 24 to 36.[61]

The Deteriorating Relations between the Ohio Political Abolitionists and the Whigs

The most significant consequence of the failure to adopt personal liberty laws after 1843 was a serious rise in the level of hostility between the Whigs and the Libertyites. Early on, the Whigs often accused the Liberty Party of playing into the hands of Democrats by drawing off Whig votes. In addition, Whig leaders such as Thomas Ewing and Oran Follett vilified the Libertyites as "fanatics" and "mercenary, corrupt scamps, whose only object is office." From the Whigs' standpoint, in short, the Libertyites, no less than the Democrats, were just a political opponent to the Whigs from the beginning, and would not be a political partner, or brethren sharing a common antislavery agenda. As for the Libertyites, while they doubted the sincerity of the Whigs' antislavery proposition or propaganda almost all the time, the intransigent attitude of the Whigs in their prosouthern fugitive slave policy in the 1840s led to transform the Libertyites' doubt and concern into firm conviction about the prosouthern and anti-abolitionist nature of the Whigs in a decisive way. Because the Whig Party dominated the Assembly between 1843 and 1848 and propagandized itself as a "true Anti-Slavery Party" or "the uncompromising enemy of Slavery," the Libertyites laid much of the blame for the consecutive legislative failures to pass personal liberty laws upon the insincerity or duplicity of the Whig Party. The Libertyites' hostility to the Whig Party came to be intense and deep. After all, the Libertyites gave up the potential for change in the Whigs' tolerance and vindication of prosouthern and inhuman fugitive

[61] House Bill No. 25: "to prevent kidnapping, and the jails and prisons of the State from being used in confining persons claimed as fugitive slaves," Ohio *House Journal: The 46th General Assembly*, December 10, 1847; February 1, 1848.

slave policy. Thus, they declared that the Whig Party was no more than an "ally of the Slave Power" and was also "nothing more than the vehicle which the oligarchy of the South employs – to carry out their usurpation upon the free citizens of the North."[62]

In the eyes of the Ohio abolitionists, what historian Vernon L. Volpe termed the Liberty Party's "forlorn hope," was none other than the Whig Party. Therefore, it seems very clear that the Ohio abolitionists must have been convinced that even the Whig Party, to say nothing of the Democratic Party, needed to be dissolved for the fundamental change of the state fugitive slave policy. Maintaining that significant change was at work in the rank and file of both parties right after a series of reactionary move of the state legislature, surprisingly enough, the Ohio abolitionist foresaw the "re-formation or disorganization" of the Whig and Democratic Parties and it would be crystallized in the formation of the Free Soil Party and the collapse of the Whig Party.[63]

The deteriorating relations between the Libertyites and the Whigs were dramatized in the repeal of the Ohio Black Laws in 1849. The repeal of the notorious Black Laws eventually resulted from the Free Soilers' collaboration with the Democrats who had been the fiercest opponent to the Black Laws. Despite the fact that the Whigs and Libertyites had together opposed slavery and slavery extension, the Whigs had been particularly hard-pressed to maintain their Southern alliance without losing too much antislavery support. Having colluded with the Democrats to frustrate such reform movements as the repeal of the Black Laws and the adoption

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[62] Edgar Allan Holt, *Party Politics in Ohio, 1840-1850* (Columbus, Ohio: The F. J. Heer Printing Co., 1931), 196-97; *Cincinnati Weekly Herald and Philanthropist*, September 17, 1845, January 14, March 18, June 10, 1846.

[63] Vernon L. Volpe, *Forlorn Hope of Freedom: The Liberty Party in the Old Northwest, 1838-1848* (Kent, Ohio: The Kent State University Press, 1990); *Cincinnati Weekly Herald and Philanthropist*, September 16, 1846.

of personal liberty laws, however, the Whigs failed to catch and reflect the growing sentiment of the antislavery wings in Ohio for positive antislavery actions. To make matters worse, they lost their last chance to be the progressive reform party by failing to take the initiative in repealing the Black Laws in 1849. Instead of the Whig Party, the Free Soilers, an "alliance of all antislavery elements," secured the repeal of the Black Laws and, surprisingly, the Democrats acquiesced in the Free Soilers' repeal effort, repudiating their long-held position on the race issue.[64]

In a new legislature in which Democrats and Whigs had nearly equal strength in both the Senate and the House, the Democrats needed the cooperation of the Free Soilers, who held the balance of power, for support on policies regarding banks, corporations, taxes, and other subject unrelated to slavery. In particular, the Democrats had to repeal the gerrymandering bill of the previous session, which divided Democratic Hamilton County into two electoral districts, one of which would be predominantly Whig. As a result of the passage of the apportionment bill, the fall elections produced two competing sets of representatives from Hamilton County. Democrats insisted that the apportionment bill was unconstitutional, accusing two Whig representatives from one of the new districts of ineligible. When both ad hoc legislatures sought to resolve the

[64] During the campaign of 1848, the Whigs called for the repeal of the Black Laws, which was regarded by the Free Soilers as sine qua non of cooperation with any other party. Holding a balance of power in the 47th legislature, the Free Soil Party was able to exert a marked influence on the policies of the Whig and Democratic Parties by combining with any party which offered the greatest inducements. The Whig Free Soilers proposed that the Whigs support Joshua R. Giddings for the United States Senate, but the conservative Whigs, who considered Giddings, a former Whig, too radical in his opposition to slavery and were disgusted with him because of his recent betrayal of the Whig Party, rejected the offer. The Democrats were in a better position for a bargain. Resultantly, the Free Soilers secured a written agreement from the Democrats to repeal the Black Laws. Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 148-56. On political realignment after the election of 1848 in Ohio, see Stephen E. Maizlish, "Ohio and the Rise of Sectional Politics," in *The Pursuit of Public Power: Political Culture in Ohio, 1787-1861*, ed. Jeffery P. Brown and Andrew R.L. Cayton (Kent, Ohio: The Kent State University Press, 1994), 117-43.

dispute, the Free Soilers came to broker a deal. The Free Soilers wanted two things in exchange for their support: the U.S. Senate seat and the repeal of Ohio's Black Laws. Unfortunately for the Whigs, the Free Soilers' offer was to elect Joshua Giddings, an ex-Whig, to the U.S. Senate, which the Whigs could not accept because they considered him too radical and also regarded him as a traitor. As a result, two Free Soilers, Norton S. Townshend and John Morse, united with the Democrats on condition of electing Salmon P. Chase as a Senator and of repealing the Black Laws. The two votes sufficed to ensure the Democratic control of the legislature and the seating of all the Hamilton County Democrats.[65]

Even though the Democrats showed some political desperation of the times by agreeing on the repeal of the Black Laws, the Whig Party as an antislavery organization proved useless to its antislavery supporters and political brethren until the end of 1840s so far as the African Americans' personal liberty and civil rights were concerned. The Whigs were losing the allegiance of the antislavery Whigs. If the Whig Party would not be able to prove their raison d´être, it doomed to disappear before long.

Indeed, the Whig Party seemed already pushed to the point of dissolution, as the Free Soilers, whose two main elements in Ohio were Liberty voters and antislavery Whigs, played a leading role in repealing the Black Laws, a subject of intense political interest, in 1849. Ohio abolitionists had been opposing all laws related to "distinctions on account of color," particularly the "Testimony Clause," which forbade black testimony in cases where a white was a party and, as a consequence, which was all the more important because the only witness was a black in almost all fugitive slave or kidnapping cases. Eventually, Free Soilers' coalition with the

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[65] On the detailed information about the background and process of the repeal of the Black Laws, see Leonard Erickson, "Politics and Repeal of Ohio's Black Laws, 1837-1849," *Ohio History* 82, no. 3-4 (Summer-Autumn 1973): 154-75; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 148-53.

Democrats succeeded in repealing the Blacks Laws, excluding any leading role of the Whigs in the process of repeal. The combination of Free Soil sentiment and abolitionism pushed both parties, but especially the Whigs, toward more problack, antislavery, and antisouthern positions. Since the Whig Party failed to pass the test of satisfying the antislavery wings' desire for the repeal of the Blacks Laws, its only chance to recover the party strength in Ohio as an antislavery organization was to change its prosouthern fugitive slave policy and adopt effective personal liberty laws as soon as possible. The fate of the Whig Party would be tested in the political upheaval created by the federal Fugitive Slave Law of 1850 for the last time.

The 1850 Fugitive Slave Law and the Intensification of Antislavery Campaign for the Personal Liberty Laws

The repeal of the Black Laws in 1849 was the greatest achievement of the Ohio antislavery circle since the repeal of the state Fugitive Slave Law in 1843. It was also just the beginning of an extraordinary antislavery campaign for the expansion of the politics of personal liberty, which would eventually lead to the adoption of personal liberty laws in 1857, as the political landscape of race and law in Ohio was transformed. This transformation was closely connected with national politics, especially the crisis in race and law caused by the Fugitive Slave Law of 1850 and the *Dred Scott* Case of 1857, and also the growth of the Republican Party, a mainstream antislavery party.

The new federal Fugitive Slave Act was a part of the Compromise measures of 1850, designed by Congress to resolve the bitter sectional disputes, raised over slavery's expansion into territories conquered during the Mexican War as well as issues raised by fugitive slaves and abolitionists. Contrary to what Democrats and Whigs in Congress had expected, however, the

adoption of the extraordinarily harsh new Fugitive Slave Law did not alleviate the sectional conflicts between the North and the South. The statute authorized U.S. district courts to appoint federal commissioners and gave them concurrent jurisdiction to issue certificates of removal for alleged fugitives in a summary hearing. It denied the alleged fugitives the right of trial by jury and the opportunity to give testimony in his or her defense. A deposition or affidavit certified in proper form by the court of the state from which the fugitive escaped shall be considered satisfactory evidence of the fact of escape and also of the identity of the fugitive. In addition, the statute empowered federal marshals to execute warrants for the arrest of fugitive slaves and made the marshals liable for any fugitives who escaped from their custody. Also it directed federal marshals to assist slaveholders and their agents in confining and transporting the fugitive slaves across state lines. To make it worse, the Fugitive Slave Act obliged every northern citizen to assist the slaveholders and slavecatchers in the capture and return of the alleged fugitives. Those who protected the fugitive slaves risked severe penalties. That is, the statute imposed a thousand-dollar fine or imprisonment for up to six months for anyone who interfered with recapture and removal of a fugitive slave from labor. To most of the Northerners, the Fugitive Slave Act was a serious offence to the North which had made an unceasing effort to secure certain legal safeguards for the personal liberty of fugitive slaves as well as free blacks in the North. Therefore, it was natural that the new Fugitive Slave Act provoked outrage in the North.[66]

The 1850 Fugitive Slave Act aroused a storm of indignation in Ohio, too. Actually, Ohio abolitionists were closely monitoring the development of the stricter federal fugitive slave

[66] An Act to amend, and supplementary to, the Act entitled "An Act respecting Fugitives from Justice, and Persons Escaping from the Service of their Masters," 9 Stat. 462 (1850) (hereafter Fugitive Slave Act of 1850). Fehrenbacher, *The Slaveholding Republic*, 227, 230, 232.

policy in Congress long before President Millard Fillmore signed the new fugitive slave bill into law on September 18, 1850. As the Democrats and the Whigs in Congress reached to an agreement that the fugitive slave clause of the U.S. Constitution ought to be enforced by federal law with efficient provisions and thus as Senator James M. Mason of Virginia assumed the leadership of a determined southern effort to obtain more effective fugitive slave legislation since the introduction of a federal fugitive slave bill in early January of 1850, Ohio abolitionists expressed their deep concern about the federal legislative action, issuing a stern warning to the advocates of the new fugitive slave legislation.[67]

The reaction of a segment of the Ohio press to the bill suggested Ohioans' determination to resist it. Lamenting that the bill would make Ohioans "negro-catchers for the slaveholders" and "bloodhounds to chase down the panting fugitive, to appease the wrath of the Southern chivalry," an Ohio editor declared that if the Congress would pass the fugitive slave bill "which violate Humanity, I will not be bound by them…I disown the act. I repudiate the obligation. Never while I have breath will I help any official miscreant in his base errand of recapturing a fellow man for bondage." In the Free Soil Convention, held in March 18, 1850 at Jefferson, Ashtabula County, the Free Soilers resolved that they regarded "obligations resting upon the people of the free States, to assist in the recapture of fugitive slaves" as "going beyond…the utmost possible requirement of the Federal Constitution, and the decision of the Supreme Court." Based on this perception, the Free Soilers proclaimed that they would "never afford any facilities, or in any way or manner assist in such recapture," stressing the need of a personal liberty law as a precaution for a new federal fugitive act in Congress.[68]

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[67] *Congressional Globe*, 31st Congress, 1st Session, 99, 103, 171, 220, 228, 233-37.

[68] *Ashtabula Sentinel*, March 23, September 28, 1850.

The passage of the more aggressive Fugitive Slave Law in 1850 was a serious blow to Ohio abolitionists still seeking to adopt a personal liberty law. This time, the statute made fugitive slave rendition entirely a federal matter. It authorized U.S. district courts to appoint federal commissioners and gave them concurrent jurisdiction with federal judges to issue certificates of removal for alleged fugitive slaves in a summary hearing that forbade their testimony. In addition, the act increased the civil liability for anyone preventing reclamation of fugitives to $1,000. Perhaps, the worst part of the act was the provision that federal officers were given authority to enlist bystanders as a *posse comitatus* to aid in rendition. Reminding them of the dark age of the state Fugitive Slave Law, the Fugitive Slave Act made Ohioans "slave-catchers" again, just as their state Fugitive Slave Law did in 1839. It also took runaway slave cases out of the northern courts, stripping away the due process protection from alleged fugitives.[69]

All these provoked a violent storm of dissent and furor in Ohio. Protest meetings were held throughout Ohio. In the Ashtabula Free Soil Convention, the Ohio Free Soilers criticized the Congress for rendering Ohio's "public officers slavecatchers for Southern task-masters," resolving that they deemed themselves "entirely relieved from all obligation to such laws" as "free citizens of a free State, formed from territory made free by the ever glorious Ordinance of 1787." Therefore, the Ohio Free Soilers would "use all constitutional means deemed necessary…to resist any enforcement" of the Fugitive Slave Act in Ohio. In another protest meeting in Trumbull on October 7, the Free Soilers declared an "open and uncompromising defiance to all attempts to enforce the infernal provisions of inhuman and unconstitutional man-

[69] Larry Gara, "The Fugitive Slave Law: A Double Paradox," *Civil War History* 10, no. 3 (September 1964): 231-32. On the more detailed history of the 1850 Fugitive Slave Law, see Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill: University of North Carolina Press, 1970).

catching law." Ohio Whigs also joined in denouncing the 1850 Act. On September 23, 1850, Ashtabula Whigs condemned the passage of the Fugitive Slave Act, pledging their effort to repeal it.[70] What was most surprising, however, was that Samuel Sullivan Cox, a conservative Ohio Democratic congressman and editor of the Democratic organ, *Ohio Statesman*, stated, "Humane people revolted at the injustice of laws which called upon them to hunt down their poor neighbors who had committed no crime and which required them to aid in sending fellow beings into perpetual bondage."[71] In some sense, the similar responses of every political faction were natural since endorsing the law openly would have meant political suicide.

A terrifying sense of crisis engulfed Ohio's blacks. Black Ohioans cried for the repeal of the Fugitive Slave Act. On January 15, 1851, they opened the annual Convention of the Colored Citizens of Ohio. In leading the attack on the federal measure, John Mercer Langston contended that the new Fugitive Slave Act was not only unjust but flagrantly unconstitutional in that it repudiated the Constitution's guarantee of trial by jury and the right of testimony. The Convention approved Charles Langston's resolution to draft a petition to Congress calling upon the "unconditional repeal" of the Act as "an outrage upon humanity." Unwilling to be satisfied with this kind of protest meeting against the stringent Fugitive Slave Act, Charles Langston

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[70] *Ashtabula Sentinel*, September 21, October 12, 1850.

[71] Samuel S. Cox, *Three Decades of Federal Legislation, 1855 to 1885: Personal and Historical Memories of Events preceding, during and since the American Civil War, Involving Slavery and Secession, Emancipation and Reconstruction; with Sketches of Prominent Actors during These Periods* (Providence, R.I.: J.A. and R.A. Reid, 1885), 48-49. It was also quoted in Emmett D. Preston, "The Fugitive Slave Acts in Ohio," *The Journal of Negro History* 28, no. 4 (October 1943): 429, 431.

would play a prominent role in the Oberlin-Wellington rescue of John Price, a fugitive slave, in 1858, and in his subsequent trial for the violation of the 1850 Fugitive Slave Act.[72]

Ohioans had a glorious memory of repealing a state Fugitive Slave Law in 1843, which was similar to the new federal Fugitive Slave Act. They would not yield to this new federal Fugitive Slave Act. Just as Joshua R. Giddings, radical antislavery Congressman of Ohio, warned in the second session of the 31st Congress on December 9, 1850, "The freemen of Ohio will never turn out to chase the panting fugitive; they will never be metamorphosed into bloodhounds, to track him to his hiding-place, and seize and drag him out, and deliver him to his tormentor; they may be shot down; the cannon and bayonet and sword may do their work upon them; they may drown the fugitives in the blood of freemen; but never will freeman stoop to the degradation of catching slaves." In this speech, Giddings represented the sentiments of Ohioans to a considerable extent. The press in the various parts of Ohio conveyed and also nurtured the exact public sentiments Giddings mentioned in his speech with the exceptions of the staunchest Democratic journals. The 1850 Fugitive Slave Act was not accepted as a finality in Ohio.[73]

The passage of new Fugitive Slave Act provided just another catalyst for a revitalization of state politics of personal liberty in Ohio since the adoption of the state Fugitive Slave Law in 1839. The Fugitive Slave Act of 1850, a humiliating concession to slaveholding states, stirred up burning indignation among antislavery Ohioans. The abolitionist *Ashtabula Sentinel* took an

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[72] Frederick J. Blue, "Black Men Have No Rights Which White Men Are Bound to Respect: Charles Langston and the Drive for Equality," in *No Taint of Compromise: Crusade in Antislavery Politics* (Baton Rouge: Louisiana State University Press, 2005), 65-89.

[73] Joshua R. Giddings, *Speeches in Congress* (Boston: John P. Jewett and Company; Cleveland, Ohio: Jewett, Proctor, and Worthington, 1853), 435; On the reaction of the Ohio press to criticize the Fugitive Slave Act of 1850, see Preston, "The Fugitive Slave Acts in Ohio," 456-72.

extremist stance, admitting the necessity of self-defense through violence as a legitimate tactic. In an editorial, it cried, "What shall our Fugitives do?"

> Shall they flee to British Soil? Or Shall they arm themselves and defend the rights which God has given them? We say let them act as they please. We would advise every fugitive to visit Canada; to set foot on free soil; to breathe free air. Let them do this, and the chains will fall forever from their limbs. They will then be free…But if fugitives now living in the free States cannot well go to Canada, we advise them to arm themselves at once. Let each member of the family who has the power to handle a weapon, be provided with arms. If the slave catcher comes, receive them with powder and ball, with dirk, or Bowie knife, or whatever weapon be most convenient. Do not hesitate. Slay the miscreant. No matter who he is or whether he come from Virginia, or be a hired bloodhound from you own neighborhood. Wait not to determine whether it be DANIEL WEBSTER, or the Editor of the Cleveland Herald, if he comes to reenslave you, or your wife, or child, furnish him with a speedy and a hospitable grave. There is no penalty against the fugitive defending himself. This law regards him as *property*, and he is no more punishable for killing his master in self-defense, than would be the mule that should kick his master fatally. Barbarous as the law is, it has not taken away the right of self-defense from the slave (*italics* in original).[74]

However eccentric or extreme the whole tone of the editorial appears to be, it reflected the burning indignation of the Ohioans over the federal Fugitive Slave Act, to a considerable extent. The hostility was neither superficial nor transient. It grew with time.[75]

Ohio abolitionists quickly recognized that they needed to capitalize on the Ohioans' discontent with the 1850 Fugitive Slave Act for the long-sought adoption of a personal liberty

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[74] *Ashtabula Sentinel*, September 28, 1850. The *Ashtabula Sentinel* reaffirmed their radical stance later again. It cried out for violent resistance to the Fugitive Slave Act: "We hope no fugitive will leave this part of the country. Let them arm themselves and associate together for mutual protection…The prevailing sentiment around us is that we have reached the point where resistance – open and undisguised resistance to this barbarous law, should commence…It is probably necessary that blood should flow, in order to arouse the people to the enormous crimes enjoined by this barbarous law." *Ashtabula Sentinel*, October 12, 1850.

[75] On antislavery acceptance of violence as a legitimate tactic after the passage of the Fugitive Slave Act of 1850, see Carol Wilson, "Active Vigilance Is the Price of Liberty: Black Self Defense against Fugitive Slave Recapture and Kidnapping of Free Blacks," in *Antislavery Violence: Sectional, Racial, and Cultural Conflict in Antebellum American,* ed. John R. McKivigan and Stanley Harrold (Knoxville: The University of Tennessee Press, 1999), 108-27.

laws to provide certain legal protections for fugitive slaves and free blacks in Ohio. After the repeal of the state Fugitive Slave Law in 1843, Ohio abolitionists had made unceasing efforts to adopt a personal liberty laws, but to no avail. Every attempt to pass personal liberty laws in legislature was thwarted by a hostile combination of the Democrats throughout the state and of the Whigs from more heavily black-populated areas outside the Western Reserve. As the Ohio abolitionists' effort to adopt personal liberty laws came to a deadlock due to the determined resistance from anti-abolitionist elements, they were losing their momentum of the search for personal liberty laws since the repeal of the state Fugitive Slave Law of 1839. But the passage of the federal Fugitive Slave Act of 1850 provided a golden opportunity for Ohio abolitionists to reinvigorate the antislavery campaign for personal liberty laws.

While supporting an open resistance of Ohioan to the Fugitive Slave Act of 1850, Ohio abolitionists resumed their effort to adopt personal liberty laws, calling on the state legislature to take prompt legislative action for a neutralization of the Fugitive Slave Act. In an anti-Fugitive Slave Act meeting of Ashtabula County, held on November 4, the resolution committee resolved to secure "the privilege of the writ of Habeas Corpus" and "the right of trial by jury" to every inhabitant of their county, requesting the state lawmakers to "use their best efforts for the passage of a law punishing by a fine of *two thousand dollars*, and imprisonment in the Penitentiary of not less than *one year*, any citizen of Ohio (not being an officer of the United States) who shall in any way aid or assist in the arrest or imprisonment of any fugitive slave in any jail of this state" (*italics* in original). On fugitive slaves' behalf, furthermore, the committee resolved to provide "services of the best legal counsel during the existence of the fugitive law." In an effort to reinforce the safeguard against the Fugitive Slave Act and slavecatchers, the meeting appointed a central executive committee of five which would "procure and circulate

petitions for repeal" and "take measures for the safety of any fugitives who may come to or remain in Ashtabula County," and also a vigilance committee which would "give general notice at the earliest possible moment of the approach of any slavecatcher."[76] Among these comprehensive safeguards for fugitive slaves, the personal liberty law the resolution committee requested was especially noteworthy for its extreme nature. By providing for a hefty fine and imprisonment for the aiding of slave-catching, this personal liberty law came to be even more rigorous than that of the 1840s.

It should be remembered that the Whigs had never used the adoption of a personal liberty law as an issue for party purpose to attract abolitionist support, in spite of their frequent use of the issue of the repeal of the Blacks Laws for the same purpose. Even though Ohio abolitionists had kept asking for the adoption of personal liberty laws since the repeal of the state Fugitive Slave Law, the Whigs, in collusion with the Democrats, had ignored the antislavery demand for personal liberty laws throughout the 1840s. Amid reluctant agreement on the repeal of the Black Laws, they had showed clearly their fierce determination not to change the prosouthern fugitive slave policy especially by adopting personal liberty laws similar to those of the other Northern states. Considering that the inability of the Whig Party to satisfy the demand of its antislavery wings and other political abolitionists for antislavery reforms, especially, for the adoption of personal liberty law effectively undermined the political base of the Whig Party and would eventually destroy the Jacksonian party system in Ohio, it was not hard to expect that antislavery legislative action for the adoption of personal liberty laws would be considered seriously and successfully in the not too distant future.

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[76] *Ashtabula Sentinel*, November 9, 1850.

In 1851, the 49th General Assembly made the unprecedented move of adopting resolutions concerning personal liberty measures. The first resolution declared that the people should not voluntarily cooperate in the enforcement of the federal Fugitive Slave Law. Another resolution provided for the legislature's appropriation of money for legal action to recover eight children and grandchildren of freed slave Peyton Polly, who had been kidnapped from Lawrence County, Ohio and were forcibly carried into Kentucky.[77] Even though no personal liberty legislation was proposed, it was path-breaking that the state legislature agreed on the adoption of collective legislative opinion supporting personal liberty measure whose deliberate object was to interfere with the execution of the federal fugitive slave law. This resolution was part of antislavery resolutions introduced in the legislature against the federal Fugitive Slave Law. Free Soilers in the legislature quickly responded to the passage of the federal Fugitive Slave Law. In the Senate, Free Soiler Senator Milton Sutliff of Trumbull County, a later state Supreme Court Judge, led antislavery forces in the Senate. An important series of six resolutions, introduced by Senator Sutliff, were adopted to counteract the challenge of the conservative legislative members. The resolutions declared the 1850 Fugitive Slave Act unconstitutional because Congress has no power to legislate on the subject and because the Act was "repugnant to the express provisions of the Constitution," especially the due process clause. In addition, the resolution stated that the Congress has a duty to "repeal all acts by which any person is deprived of liberty, without due process of law; and especially all acts by which any person is held in slavery, in any place subject to exclusive national jurisdiction." Most intriguing and important was the fourth

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[77] On the *Peyton Polly* case, see Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 216-19; Carol Wilson, *Freedom at Risk: The Kidnapping of Free Blacks in America, 1780-1865* (Lexington, Kentucky: The University Press of Kentucky, 1994), 76-82. Ohio *House Journal: The 49th General Assembly*, March 20, 1851; William C. Cochran, *The Western Reserve and the Fugitive Slave Law* (New York: Da Capo Press, 1972), 104-05.

resolution, in which Senator Sutliff attempted to repudiate the provisions of the Fugitive Slave Act by declaring it to be duty of the state courts to allow the writ of habeas corpus in all cases involving fugitive slaves.[78] The new habeas corpus act revised in the 45th General Assembly prohibited the use of state writ of habeas corpus as a process to provide for a full evidentiary hearing if a person was claimed under federal fugitive slave law. But, this resolution reversed the restriction upon the use of the state writ of habeas corpus in the 1847 habeas corpus act. Even though the legislature did not repeal the revised habeas corpus act, it heralded a significant transformation of state fugitive slave policy.[79]

Efforts to suppress this growing antislavery sentiment to nullify the federal Fugitive Slave Law, "the manstealing law,"[80] soon emerged in southern parts of the state where some conservative political and social leaders influenced the public opinion in favor of reluctant acquiescence in the Compromise of 1850. The Whig press such as the *Ohio State Journal* and the *Cincinnati Gazette*, and the Democratic press such as the *Ohio Statesman* made efforts to form a public opinion in this direction. Some public meetings at Dayton and Cincinnati praised the Compromise as an end of sectional conflicts and urged its acceptance in good faith. In addition, both Governor Seabury Ford in his final message and Reuben Wood in his inaugural

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[78] Ohio *Senate Journal: The 49th General Assembly*, December 11, 1850; Thomas D. Matijasic, "The Reaction of the Ohio General Assembly to the Fugitive Slave Law of 1850," *Northwest Ohio Quarterly* 55, no. 2 (Spring 1983): 40-60. In the 49th General Assembly, in addition to Senator Sutliff, Democratic Senator Aaron Pardee of Medina County denunciated the Fugitive Slave Act, offering an amendment to the Sutliff resolutions that the Act was "objectionable, because of its inhumanity – its disregard of the natural and inalienable rights of man, and its hostility to the spirit of the age of progress in which we live." Also, Free Soil Senator Brewster Randall of Ashtabula County introduced similar resolutions denouncing the Fugitive Slave Act as "unwise, unjust, and oppressive" and, therefore, asking for the prompt repeal of the Act. Ohio *Senate Journal: The 49th General Assembly*, December 11, 13, 1850.

[79] Morris, *Free Men All*, 164-65.

[80] *Ashtabula Sentinel*, October 19, 1850.

message endorsed the constitutionality of the Fugitive Slave Law and recommended implicit obedience to its provisions, even though they criticized the federal law.[81] On the surface, it seemed that these efforts from the conservative circle worked well and the Compromise of 1850 had temporarily muted the territorial question for a while. In particular, threats of secession from the South and the conservative appeal for Unionism seemed to compel the Northerners to accept it as a reasonable concession to the South.[82]

However, the sectional animosity and political crisis which the passage of the Fugitive Slave Law of 1850 created in Ohio planted seeds of fundamental change in the fugitive slave policy resulting in the adoption of personal liberty laws in 1856 and 1857. Charles Sumner, a leader of the later radical Republicans, pointed out that "It is…with rare dementia that this power [the Slave Power] has staked itself on a position which is so offensive, and which cannot for any length of time be tenable. In enacting that law [the Slave Power] has given to the free States a sphere of discussion which they would otherwise have missed. No other form of the slavery question, not even the Wilmot Proviso, would have afforded equal advantages."[83] As Sumner pointed out, the Wilmot Proviso was fundamentally an abstract question regarding the far-off territories and so the discussion of it might be postponed. In addition, the Compromise was somehow acceptable for the North at least without the Fugitive Slave Act. But, the Fugitive Slave Act of 1850 brought the slave issue into the middle of everyday life. Particularly, the Act

[81] *Ohio State Journal*, December 17, 1850; *Ashtabula Sentinel*, December 21, 1850.

[82] John Mayfield, *Rehearsal for Republicanism: Free Soil and the Politics of Antislavery* (Port Washington, New York: Kennikat Press, 1979), 174-78; Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill, N.C.: University of North Carolina Press, 1970), 49-79.

[83] Sumner to Theodore Parker, April 19, 1851 in Edward Lillie Pierce, *Memoir and Letters of Charles Sumner*, 4 vols. (Boston: Roberts Brothers, 1877; reprinted. New York: Arno Press, 1969), 3:246.

was nothing less than a revival of the state Fugitive Slave Law of 1839 for the Ohioans. The reappearance of the issue of the more rigorous Fugitive Slave Act was explosive enough to reinvigorate the politics of personal liberty in Ohio. In this situation, the transformation of political terrain for the birth of personal liberty laws in Ohio began to proceed step by step.

The Path to the Adoption of the Personal Liberty Laws in 1857

The first stage was the collapse of the Whig Party. As demonstrated above, the Whig Party in Ohio was already on the decline by its failure to satisfy its antislavery wings and other abolitionists for the antislavery measures regarding personal liberty and civil rights of fugitive slave and free blacks since the adoption of the state Fugitive Slave Law of 1839. In its collapse, however, the passage of the Fugitive Slave Law in 1850 was decisive. Ohio abolitionists reaffirmed that the Whigs had no will to change their prosouthern fugitive slave policy. As the Whigs had colluded with the Democrats in passing the state Fugitive Slave Law in 1839, so did the same Whigs connive with the Democrats to ensure the passage of the Fugitive Slave Law in 1850. Sneering at the Whigs who spoke of the Fugitive Slave Law as a "Locofoco measure," pretending that they had nothing to do with the passage of the 1850 Fugitive Slave Law, Ohio abolitionists exposed the Whigs' hypocrisy in that they did neither reprove John L. Taylor, a Whig member of Congress from Ohio, who voted for the Fugitive Slave Law, nor even express dissatisfaction at Robert C. Schenck or other eighteen Northern Whig members who dodged the question. Furthermore, the abolitionists pointed out that the Whigs had no word of denunciation for Daniel Webster and Henry Clay who advocated the enactment of the infamous law, to say nothing of President Millard Fillmore who approved it. It was certain that the Whigs would not be able to restore the trust of the antislavery advocates. In this situation, it was only a matter of

time before the Whig Party would collapse completely and, in 1852. Indeed, the party virtually collapsed, as the Democrats swept the Congress and the White House.[84]

With the collapse of the Whig Party, the persistent antislavery campaign of the Free Soil Party and the emergence of the Republican Party as an expanded reproduction of the Free Soil Party guaranteed the adoption of personal liberty laws in Ohio by the late 1850s. Built on the ideology of free labor claiming the superiority of the Northern social and economic system over the Southern system based on slavery, the Free Soil Party should not be "the servant of the Slave Power" or "the tools of the Slave Propagandists" like the Whig and Democratic Parties.[85] Therefore, the Free Soil Party did not need to hide the intense hostility many Ohioans felt toward the slaveholding South and the slave interest which attempted to settle the sectional dispute by the absurd "Compromise" based on the rigorous Fugitive Slave Act. Unlike the Whigs, the Free Soilers did not make an effort to please the southern slaveholders, and, unlike the Liberty Party, the Free Soilers could exert enough political influence by holding a balance of power in the state legislature until the emergence of the Republican Party. That was the important reason that the Free Soil Party accomplished a remarkable feat of antislavery reforms such as the repeal of the Black Laws and the adoption of personal liberty resolutions in such short span. Certainly, the Whig decline resulted from its own failure and the success of the Free Soil Party in the series of important antislavery campaigns. If the Free Soil Party could be one of the mainstream parties instead of the Whig Party, the overdue adoption of personal liberty laws, however radical, was no longer a vain hope.

In 1854, the Kansas-Nebraska Act, which nullified the Missouri Compromise of 1820 and allowed slavery in most of the federal territories, laid the foundations for the reconstitution

[84] *Ashtabula Sentinel*, October 12, 1850.

[85] *Ashtabula Sentinel*, August 31, 1850.

and expansion of the Free Soil Party under a new name – "Republican." The passage of this act set off an unprecedented political reaction, making possible a fusion convention of Anti-Nebraska men – Whigs, Democrats, and Free Soilers – in Columbus. In 1855, the fusionists officially became the Republican Party, the first mainstream political party openly opposed to slavery. In Ohio, the Republican Party attracted most former Whigs, Free Soilers, and Libertyites, as well as antislavery Democrats. In 1856, the Ohio Republican Party dominated the state legislature and elected Salmon P. Chase as one of the first Republican governors in the nation. The anti-extensionist crusaders were especially enraged by what seemed to them to be a southern betrayal to the concession and consideration which the State of Ohio had made in dealing with fugitive slave issue. Denouncing publicly the slaveholding South, the *Cincinnati Gazette* declared an abrogation of the Compromise of 1850 and a radical transformation of fugitive slave policy in Ohio as follows: "You have uprooted our confidence in Southern political faith. There will be no more compromise with slavery on the part of the North. There will be no more renditions of fugitive slaves under the compromise act of fifty. You have betrayed those Northern men who have always stood by you, and turned their support into opposition."[86] Interestingly enough, the *Cincinnati Gazette* confessed that Ohio had sustained a longstanding prosouthern fugitive slave policy. As the *Cincinnati Gazette* testified, however, the prosouthern fugitive slave policy of Ohio which had never allowed the passage of even one personal liberty law would be no longer tenable.

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[86] *Cincinnati Gazette*, January 24, May 24, 1854; Maizlish, "Ohio and the Rise of Sectional Politics," 136-37. On the more detailed information about the Kansas-Nebraska Act and the political reaction of the anti-extensionists in Ohio, see Stephen E. Maizlish, *The Triumph of Sectionalism: The Transformation of Ohio Politics, 1844-1856* (Kent, Ohio: The Kent State University Press, 1983), 187-224.

In the midst of rapidly changing political atmosphere around fugitive slave policy in Ohio, the *Margaret Garner* case in 1856 prompted the state legislature to focus urgent discussion on passing personal liberty laws to secure legal protection for African Americans. This case strikingly illustrated how ineffective and impotent the laws and authority of the free States were before the federal Fugitive Slave Law and how little protection the oppressed blacks could expect from those laws and authority. In January 1856, a black woman, named Margaret Garner, and her four children were seized in Cincinnati after escaping from their owner, Archibald K. Gaines of Kentucky. However, before the claimant and the marshals assisting him could capture the woman and her children, she had killed her youngest child and had tried to kill the others "rather than return to slavery." This Garner case became one of the nation's most sensational and tragic fugitive slave cases.[87] Salmon P. Chase, now governor of Ohio, urged Republican Representative James Monroe of Lorain County to introduce proper personal liberty legislation in the General Assembly. At the request of the Governor, Representative Monroe introduced a bill "further to amend an act entitled 'an act securing the benefit of the writ of habeas corpus.'" Through this bill, Representative Monroe tried to make a drastic change in the state writ of habeas corpus act. In spite of the reform requests of the antislavery forces, actually, the revised state writ of habeas corpus act in 1847 retained a poisonous clause which prohibited the state writ from being used as a process to provide for a full evidentiary hearing if a person was claimed under federal fugitive slave law. However, the Monroe bill authorized an Ohio judge to issue a writ of habeas corpus that would command state authorities to bring anyone detained as a

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[87] Samuel May, *The Fugitive Slave Law and Its Victims* (Freeport, New York: American Anti-Slavery Society, 1861), 50-62; Julius Yanuck, "The Garner Fugitive Slave Case." *The Mississippi Valley Historical Review* 40, no. 1 (June 1953): 47-66; Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 229-32; *Cincinnati Daily Commercial*, January 29, 30, 31, 1856; *Cincinnati Gazette*, January 30, 1856.

fugitive slave before the state court regardless of jurisdiction. In short, the Monroe bill would have given state officers absolute power over a fugitive slave. Although the Monroe bill would have provided an indispensable legal protection for a fugitive slave if adopted, it would also nullify the 1850 Fugitive Slave Law, bringing about unnecessary, full-scale conflicts between the state courts and the federal courts. This bill was too radical and risky to pass in the legislature. As a consequence, the Judiciary Committee tempered the original Monroe bill and the moderate version of the bill was passed.[88]

However, the Ohio abolitionists and antislavery advocates did not long mourn the failure to pass the radical state writ of habeas corpus act. This battle was just part of the series of antislavery legislative efforts to pass personal liberty laws in the 52nd General Assembly. The Republican-controlled legislature from 1856 to 1857 adopted personal liberty laws whose ostensible purpose was to protect free blacks and fugitive slaves from kidnappers and slavecatchers, and at the same to deliberately hamper enforcement of the federal Fugitive Slave Act in Ohio. The Ohio legislature attempted to adopt total seven personal liberty laws and finally succeeded in passing three. On April 16, 1857, the House passed one of three personal liberty laws forbidding the use of the jails of the state for the confinement of persons not charged with crime. It provided in unmistakable language that "It shall be unlawful to confine in the Penitentiary of this State, or in the Jails of any county of this State, any person or persons charged with simply being a fugitive from slavery." In addition, this law provided a term of

[88] House Bill No. 71: "Further to amend an act entitled 'an act securing the benefit of the writ of *habeas corpus*.'" Ohio *House Journal: The 52nd General Assembly*, The First Section, February 6, March 12, 14, April 4, 5, 1856.

from twenty to ninety days in jail and a fine of five hundred dollars "for any violation of this Act by an officer of the State"[89]

The other personal liberty laws resulted from more aggressive steps which the Senate took in response to the *Margaret Garner* case. On January 30, 1856, Republican Senator Oliver P. Brown of Portage and Summit Counties from the Judicial Committee offered resolutions condemning the slavecatchers and assisting marshals in the *Margaret Garner* case and requesting to introduce a personal liberty bill to prevent the recurrence of similar tragic fugitive slave case in Ohio.[90] By the middle of March, as follow-up measures of the resolutions, Senator Brown introduced three personal liberty laws of his own which punished the state officers for aiding in the capture of a fugitive slave from slavery, penalized Ohio citizens for voluntarily engaging in slavecatching, and, lastly, prevented the jails and prisons of Ohio from being used for the purpose of confining, detaining or imprisoning fugitive slaves.[91] Unfortunately, none of these measures came out of the Committee of the Whole. It seemed that the introduction of several similar bills in both Houses contributed the demise of those personal liberty bills. Prior to Senator Brown's personal liberty laws, indeed, Republican Senator Chancey G. Hawley of

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[89] An Act to prohibit the confinement of fugitives from slavery in the jail of Ohio, 54 Laws of Ohio 170 (1857). This bill was originally introduced by Republican Representative Erastus Guthrie of Morgan County under the title of "H.B. No. 122: To prohibit the use of the jails of the State for the confinement of any person not charged with some crime or misdemeanor." The title was amended on motion of Senator Alfred Kelley of Franklin County. Ohio *House Journal: The 52nd General Assembly*, The First Section, March 1, 1856. See also Salem *Anti-Slavery Bugle*, March 28, August 13, 1857; Preston, "The Fugitive Slave Acts in Ohio," 472.

[90] Ohio *Senate Journal: The 52nd General Assembly*, The First Section, January 30, 1856.

[91] Senate Bill No. 144: To punish the ministerial officers of counties, townships, villages and cities in the State of Ohio for aiding in the capture of fugitive from slavery; Senate Bill No. 145: To punish the citizens of Ohio for voluntarily engaging in slavecatching; Senate Bill No. 146: To prevent the jails and prisons of Ohio from being used for the purpose of confining, detain, or imprisoning so called fugitives from slavery. Ohio *Senate Journal: The 52nd General Assembly*, The First Section, March 17, 1856.

Lawrence and Meigs Counties introduced a personal liberty bill preventing the abduction of free blacks in Ohio, which constituted one of the series of the personal liberty laws in the 52nd legislature. This law provided a sentence of three to eight years at hard labor in the penitentiary for anyone who might "kidnap or forcibly or fraudulently carry off or decoy out of this state any black or mulatto person or persons" without following the procedures of the federal fugitive slave law. With the passage of this personal liberty law, the Senate sealed the legislative attacks aiming the *Margaret Garner* case by adopting a resolution urging the repeal of the federal Fugitive Slave Act as "inconsistent with and unwarranted by the Constitution of the United States" and "repugnant to the plainest principle of justice and humanity."[92]

The last personal liberty law adopted in the 52nd General Assembly was all bound up with the *Dred Scott* case.[93] At the beginning of April the Senate Committee on Federal Relations, which considered resolutions condemning the decision of the Supreme Court in the *Dred Scott* case, reported a bill "To prevent slaveholding and kidnapping in Ohio." This bill, which became law on April 17, mandated that any person attempting to hold another as a slave, to seize or arrest, or use any force or fraud for the purpose of detaining any other person, upon pretense that such person was a fugitive, or to kidnap any person any person with intent to carry out of the State for the purpose of enslaving him in other states, should be punished by imprisonment and

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[92] Senate Bill No. 61: To prevent the forcible abduction of free blacks and mulattoes from State of Ohio. The title of this bill was amended as follows: Senate Bill No. 61: To prevent kidnapping. Ohio *Senate Journal: The 52nd General Assembly*, The First Section, February 12, March 28, April 8, 1856; An Act to prevent kidnapping, 54 Laws of Ohio 221 (1857).

[93] *Scott* v. *Sanford*, 60 U.S. (19 How.) 393 (1857). The case held that the Missouri Compromise was unconstitutional and the blacks were not, and could not be, citizens of the United States. See Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in Law and Politics* (New York: Oxford University Press, 1978); Austin Allen, *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-1857* (Athens, Georgia: The University of Georgia Press, 2006); Finkelman, *An Imperfect Union*, 313-43.

fine. Even though the final section provided that this bill should not apply to the any act lawfully done by any marshal in the execution of any legal process, this act contravened the 1850 Fugitive Slave Law by limiting the operation of arrest to only federal marshal and by prohibiting state officers from participating in the arrest of the alleged fugitives.[94]

Significance of the Personal Liberty Laws of Ohio

The importance of the passage of three personal liberty laws in the Ohio legislature cannot be overemphasized. First of all, the antislavery struggle to adopt the personal liberty laws testified to the importance which Ohio abolitionists attached to the project as a major antislavery campaign in Ohio. Even though Ohio abolitionists and antislavery radicals had tried to pass a personal liberty law in almost every legislature since the repeal of the state Fugitive Slave Law in 1843, anti-abolitionists in the Ohio legislature had effectively frustrated every antislavery campaign for the adoption of a personal liberty law until 1857. In the process, however, the antislavery struggle to adopt the personal liberty laws effectively unified every antislavery factions and the collective power of the antislavery forces served as the foundation for the establishment of the antislavery politics against the aggression of the Slave Power. The passage of the personal liberty laws in 1857 became a symbol of the success of the Ohio antislavery movement since the repeal of the Black Laws in 1842.

Secondly, the adoption of three personal liberty laws signified fundamental transformation of state fugitive slave policy and, at the same time, the wholesale replacement of anti-abolitionist political forces with a strongly antislavery party. Longstanding absence of personal liberty laws in Ohio represented that Ohio sustained a stable prosouthern state fugitive

[94] Ohio *Senate Journal: The 52nd General Assembly*, The Second Section, April 1, 11, 1857.

policy. Indeed, Ohio, unlike the other northern states, had not passed even one personal liberty law until the 52nd General Assembly because of a hostile combination of the Democrats throughout the state and of the Whigs from southern parts of the state. Considering that Ohio antislavery forces finally put down the anti-abolitionist resistance to personal liberty legislation, the passage of personal liberty laws denoted fundamental transformation of state fugitive slave policy as revealed in every provision of the personal liberty laws hostile to the slaveholders and the system of slavery itself.

Thirdly, the passage of the personal liberty laws signified that the quasi-antislavery party such as the Whig Party no longer secured its position in the intensifying antislavery politics in Ohio as it lost its political identity as an antislavery party. The majority of the Whigs, which propagandized themselves as true antislavery forces, retained a deep-rooted abhorrence of abolitionism and inherent fear of radicalism especially as revealed in the personal liberty bills. Therefore, they were no less aggressive than the Democrats in crushing every legislative effort to pass a personal liberty law. Particularly, the Whigs were all the more fatal because they obtained most of the political support from the antislavery advocates. This was the reason why Ohio abolitionists desired the disorganization of the Whig Party and the formation of alternative antislavery forces for the adoption of a personal liberty law. For this reason, the passage of personal liberty laws in the 52nd legislature marked the decline of a conservative political force, the Whigs, and the growth of alternative antislavery force as one of major parties in Ohio.

Most of legal historians including Morris paid attention to the conservative or moderate nature of the personal liberty laws in the North. There is an element of truth in the assessment of Morris about the Ohio personal liberty laws that they represented “moderate responses to a

distasteful federal court decision [of the *Dred Scott* Case]."[95] Also, as some Ohio abolitionists complained about the new "bill to prevent slaveholding and kidnapping in Ohio," it seems probable that the final provision of the bill gave "indubitable evidence that…Legislature…have not yet done either with concession or compromise" and that it was "nothing else than a clear and full declaration of their intended continued submission to the abomination of the fugitive slave law."[96] Considering that those personal liberty laws were the first, swift responses to the more aggressive federal fugitive slave policy in the 1850s than those in the 1840s, however, they tends to underestimate the meaning of the passage of the personal liberty laws. Furthermore, because the first three provisions of the "bill to prevent slaveholding and kidnapping in Ohio" were well designed to prevent slaveholding and kidnapping, there was little room that the last provisions worked against them. In addition, no other states had taken the extreme step that Ohio had in criminalizing slaveholding in its territory. Likewise, although the "bill to prevent kidnapping" might seem to assist slaveholders in the enforcement of the federal law, as historian Paul Finkelman points out, it was in fact designed to prevent masters from exercising a common law right of recaption.[97]

Criticizing the seemingly moderate nature of the "bill to prevent slaveholding and kidnapping in Ohio," the abolitionist *Anti-Slavery Bugle* declared that "When our Legislature become willing to save the slave instead of the Union and to protect him in the enjoyment of his personal liberty, we may successfully resist the executive and judicial encroachments of the slave

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[95] Morris, *Free Men All*, 182.

[96] Salem *Anti-Slavery Bugle*, April 11, 1857.

[97] Paul Finkelman, "Race, Slavery, and Law in Antebellum Ohio," in *The History of Ohio Law*, 2 vols. ed. Michael Les Benedict and John E. Winkler (Athens, Ohio: Ohio University Press, 2004), 2:770.

power; until we are thus willing to plant ourselves beside the slave and join in his contest with the master."[98] When the Ohio legislature passed the personal liberty laws in 1857, however, it was ready to do what the *Anti-Slavery Bugle* declared. The declaration of the *Anti-Slavery Bugle* was that of the Ohio legislature and also "Freemen's declaration of Independence" in Ohio.

[98] Salem *Anti-Slavery Bugle*, April 11, 1857.

Epilogue

Pursuit of Personal Liberty Laws and the Revolutionized Civil War

From 1839 on, the struggle to repeal the state Fugitive Slave Law and adopt personal liberty laws defined antislavery movement in Ohio. Unlike the general trend across the North, in which the Free Soil and Republican antislavery focused on the restriction of slavery, the slave-centered abolitionism of personal liberty politics remained dominant in Ohio. Even when sectional conflicts were escalating and, as a result, Republican leaders stressed the necessity of political compromise and conciliation, Ohio radicals remained determined to persist in their radical antislavery campaigns to repudiate the federal Fugitive Slave Law and adopt personal liberty laws.

Historian Paul Finkelman is convinced that the persistent politics of personal liberty in Ohio constituted the origins of the Fourteenth Amendment. From Finkelman's viewpoint, the radical Republicans such as John A. Bingham, James M. Ashley, Salmon P. Chase, Joshua R. Giddings, Benjamin F. Wade, Jacob Brinkerhoff, and Edward Wade were the political disciples baptized by the personal liberty politics of Ohio. Since the radical Republicans, as chief advocates for the personal liberty and equal rights of blacks, had been in the middle of the uphill battles against the slavery interests for the protection of blacks and the attainment of personal liberty laws, they better than anyone understood the urgent need for the personal liberty laws and the stiff resistance of the slavery interests to them.

As far as the federal Fugitive Slave Law and fugitive slave questions were concerned, the radical Republicans became even more resolute. When the Ohio Supreme Court, headed by Chief Justice Joseph R. Swan, upheld the constitutionality of the Fugitive Slave Law by a three-

to-two ruling concerning the "Oberlin-Wellington rescue" case on May 31, 1858,[1] the radicals, led by Bingham, Ashley, and Giddings, showed their determination to defend antislavery cause by refusing to endorse Swan's renomination and by adopting the Republican platform that the federal Fugitive Slave Law be repealed as unconstitutional and the federal Judiciary be reorganized.[2]

The radical Republicans of Ohio must have been in the vanguard of revolutionary antislavery campaigns for a radical change to the Constitution and racial relations. Concerned about their radicalism, Abraham Lincoln expressed his regret about their move in a letter,

[1] On September 13, 1858, a federal marshal in Oberlin, Ohio, arrested a runaway slave named John Price and took him to near Wellington. On hearing the news of arrest, students and faculty from Oberlin College and other citizens from Oberlin and Wellington rescued Price in federal custody and took him to freedom in Canada. In December, a federal grand jury indicted thirty-seven of the rescuers and Ohio authorities responded by arresting the federal marshal and his deputies for kidnapping. After the negotiation between state and federal authorities, the state government set the federal officers free and the federal government convicted only two of the abolitionist defendants: Simeon M. Bushnell (white) and Charles H. Langston (black). Ultimately they were found guilty in federal court in April 1859. While in federal custody, Bushnell and Langston sought a writ of *habeas corpus* from Ohio Supreme Court, claiming that the federal government did not have authority to arrest them because the federal Fugitive Slave Law was unconstitutional. In preparing for the confrontation with federal officials in case of the execution of the writ, Governor Chase was prepared to call out militia. However, the Oho Supreme Court avoided the crisis by upholding the constitutionality of the 1850 Fugitive Slave Law. See Roland M. Baumann, *The 1858 Oberlin-Wellington Rescue: A Reappraisal* (Oberlin, Ohio: Oberlin College, 2003); William C. Cochran, *The Western Reserve and the Fugitive Slave Law: A Prelude to the Civil War* (1920; New York: Da Capo Press, 1972), 118-57; Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio* (Athens, Ohio: Ohio University Press, 2005), 236-39; Eugene H. Roseboom, *The Civil War Era: 1850-1873*, in *The History of the State of Ohio*, ed. Carl Wittke, 6 vols. (Columbus, Ohio: Ohio State Archeological and Historical History, 1944), 4: 345-50, 352-54; William Cheek and Aimee Lee Cheek, *John Mercer Langston and the Fight for Black Freedom, 1829-65* (Urbana, IL: University of Illinois, 1989), 316-417.

[2] Robert F. Horowitz, *The Great Impeacher: A Political Biography of James M. Ashley* (New York: Columbia University Press, 1979), 44-45; Robert M. Cover, *Justice Accused: Antislavery and The Judicial Process* (New Haven: Yale University Press, 1975), 252-56.

> Two things done by the Ohio Republican convention --- the repudiation of Judge Swan, and the "plank" for a repeal of the Fugitive Slave law --- I very much regretted. There two things are of a piece; and they are viewed by many good men, sincerely opposed to slavery, as a struggle against, and in disregard of, the constitution itself. And it is the very thing that will greatly endanger our cause, if it be not be [*sic*] kept out of our national convention.[3]

Considering Lincoln's concern and regret, it becomes clear that the Ohio radical Republicans' personal liberty-centered program of abolitionism was not overshadowed by the Republican program of restrictionism. In other words, their antislavery campaigns for the personal liberty and equal rights of blacks took an absolute strategic priority over any other antislavery programs. Therefore, for the radical Republicans, the security of personal liberty of blacks and the legal measures for it was not the object of any political compromise and conciliation.

Ohio radical Republicans' commitment to the ideals of personal liberty and human equality, and their determination to not merely provide assistance to fugitive slaves but also eradicate the institution which enslaved human beings, were dramatized at national level. On the eve of the Civil War, on January 29, 1861, U.S. Representative Ashley of Toledo, Ohio, proposed the first federal personal liberty law. The Act, House Bill 1009 was entitled "The Amendment of an Act for the Rendition of Fugitives from Labor." The Ashley bill was designed to protect the rights of the alleged fugitive slaves and undermine the federal Fugitive Slave Law of 1850. Most of all, the Ashley bill replaced the compulsory provision of the 1850 law regarding *posse comitatus* with the prohibitory provision that "no citizen of any State shall be compelled to aid the Marshal or owner of any fugitive, in the capture or detention of such fugitive." In addition, this amendment expanded the authority of judges to emancipate the

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[3] Lincoln to Samuel Galloway, Abraham Lincoln, *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler, 9 vols. (New Brunswick, N.J.: Rutgers University Press, 1953), 3: 395.

accused as a fugitive slave on condition that they should pay the value of labor owed which were determined by the judges. If the claimant refused to accept such terms, the Court would deliver the party who deposited the money for the freedom of the fugitive slave a "certificate of discharge" and the fugitive slave should be free and released from all obligations to serve the said claimant. Furthermore, the amendment guaranteed public hearing, the right of trial by jury, the aid of attorney, and the federal support for the cost for procuring evidence. Lastly, it required that "all acts and parts of acts inconsistent with the provisions of this Act be, and the same hereby repealed."[4]

At a moment when almost every politician tried to find compromise solutions in order to avert disunion, Ashley's national personal liberty bill was provocative and, in some respects, ill-timed, considering the looming national crisis. But, for the exactly same reasons, it testified to the Ohio radical's devotion to the ideals of civil liberties and equal rights, not the sacrifice of them for Unionism and the spirit of compromise. Although the bill passed in the House by a vote of 92 to 82 on March 1, it failed to become law.[5] Yet, Ashley's bill proved to be the prologue to the decisive change of federal fugitive slave policy. Congressman Ashley followed up with a bill to abolish slavery in the District of Columbia, which he introduced on March 12, 1861, and both houses of Congress voted on April 16, 1862 to abolish slavery in the District of Columbia.[6] Furthermore, Ashley and his abolitionist colleagues won another huge victory when Congress voted on June 23, 1862 to abolish slavery in the territories without compensation.[7]

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[4] *Toledo Blade*, February 8, 1861, also quoted in Emmett D. Preston, "The Fugitive Slave Acts in Ohio," *The Journal of Negro History* 28, no. 4 (October 1943): 475-77; *Congressional Globe*, 36th Congress, 2nd Session, 1327-28, 1337 (1861).

[5] *The New York Times*, March 2, 1861.

[6] Ashley's original bill was undermined by the insertion of the amendment providing for compensated emancipation. In spite of his reluctance, Ashley had to accept the amendment

However, what completed the long journey to secure the personal liberty and civil rights of blacks was the passage of the Thirteenth and Fourteenth Amendments to the Constitution. Less than two years after his national personal liberty law failed, Ashley sought to establish the legal system that should forever safeguard personal liberty by moving to constitutionalize Lincoln's Emancipation Proclamation of 1863, which declared that "all persons held as salves within said designated States and parts of States are, and henceforward shall be, free; and that Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons." On December 14, 1863, Ashley proposed the original draft of the Thirteenth Amendment. As finally approved by the Judiciary Committees of both Houses, the proposed amendment to the Constitution read:

> "Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been fully convicted, shall exist within the United States, or any place subject to their jurisdiction; Section 2: Congress shall have power to enforce this article by appropriate legislation."

Significantly, the wording of the Thirteenth Amendment was taken from two antislavery documents, the Northwest Ordinance of 1787 and the Wilmot Proviso of 1846, which were used as theoretical sources to establish the unconstitutionality of the federal Fugitive Slave Law and antislavery restriction.[8] By reviving two significant antislavery ideas, Ashley attempted to

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because of President Abram Lincoln's opposition to emancipation without compensation. Lincoln was concerned that Ashley's original bill might alienate loyal slaveholders of the border states. W. Sherman Jackson, "Representative James M. Ashley and The Midwestern Origins of Amendment Thirteen," *Lincoln Herald* 80, no. 2 (Summer 1978): 84-85.

[7] *Congressional Globe*, 37th Congress, 2nd Session, 2871.

[8] Les Benedict, "James M. Ashley, Toledo Politics, and the Thirteenth Amendment," *The University of Toledo Law Review* 38, no. 3 (Spring 2007): 833-35; Jackson, "Representative James M. Ashley and The Midwestern Origins of Amendment Thirteen," 86-93.

implant both abolitionist and antislavery principles into the Thirteenth Amendment. As Ohio's Democratic Representative George Bliss noticed, the amendment was a revolution of "the most dangerous tendency."[9] Despite the opposition of Bliss and many other Democrats, the Thirteenth Amendment was finally passed by the vote of 119 to 56 on January 31, 1865 and sent on to the states for ratification. The passage of the Thirteenth Amendment put an end to the longstanding constitutional disputes over the personal liberty laws of the North and signified the realization of the radicalism embodied in the personal liberty laws.

However, it became soon clear that the abolition of slavery would not guarantee the freedom and civil rights of the emancipated blacks. Even as the ratification of the Thirteenth Amendment succeeded in late 1865, the Southern states set the new stage for the quasi-slavery system by enacting a series of Black Codes. Even more important was the Southerners' murderous and lethal violence directed at blacks (and white Unionists) after the war.[10] Public opinion in the North would not tolerate this Southern intransigence. Eventually, Congress took follow-up action for the substantial protection of civil rights and freedom of African Americans. On July 9, 1868, the Fourteenth Amendment, the last word of the personal liberty laws of the North, was adopted. In particular, Section one of the Fourteenth Amendment overruled the U.S. Supreme Court decision in *Dred Scott* v. *Sanford*[11] by providing national citizenship for all persons regardless of race and stipulated the due process of law without which no person was

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[9] *Congressional Globe*, 38th Congress, 2nd Session, 149.

[10] Paul Finkelman, "John Bingham and the Background to the Fourteenth Amendment," *Akron Law Review* 36, no. 4 (2003): 680-90; William E. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine* (Cambridge, Massachusetts: Harvard University Press, 1988), 40-43.

[11] *Dred Scott* v. *Sanford*, 60 U.S. (19 How.) 393 (1857).

allowed to be deprived of life, liberty or property. In addition, it provided that no state could abridge the "privileges and immunities" of citizens and its equal protection clause required each state to provide equal protection under the law to all person within its jurisdiction.[12]

The principal framer and champion of the important Section one of the Fourteenth Amendment and at the same time the real floor manager of the Amendment was Ohio Republican Congressman John A. Bingham. Hence, U.S. Supreme Court Justice Hugo Black called Bingham "The Madison" of the Fourteenth Amendment.[13] As historian Jacobus tenBroek, who convincingly demonstrated the "Antislavery Origins of the Fourteenth Amendment," found, Bingham combined "various strands of abolitionist constitutional development" in the Amendment.

> The work of Bingham was the meeting ground, in a sense that the work of no other individual was, of the three concepts and clauses that came to constitute the first section of the amendment. He accepted the amalgamation of natural rights, due process, and equal protection which had become the prime constitutional adornment of the party platforms.[14]

Indeed, Bingham aimed to complete the unfinished work of personal liberty laws, which was to realize abolitionist beliefs that all person were born free and equal and could not be deprived of those natural rights without due process of law and that the ideal could be not achieved without total destruction of the oppressive regimes of slavery and the Black Codes of the South. Bingham was not alone in stating the radical abolitionist principles. Most

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[12] U. S. Constitution. Amendment XIV, § 1.

[13] *Adamson* v. *California* 332 U.S. 46, 74 (1947) (Black, J., dissenting), quoted in Richard L. Aynes, "The Continuing Importance of Congressman John A. Bingham and the Fourteenth Amendment," *Akron Law Review* 36, no. 4 (2003): 590.

[14] Jacobus tenBroek, *Equal Under Law* (New York: Collier Books, 1965), 145. *This book was originally published in 1951 under title: *The Antislavery Origins of the Fourteenth Amendment*.

Republicans found it to be persuasive that "American system of government was based on higher law and accorded protection to precisely those rights derived from higher law."[15]

Alongside the issues of legal repression and murderous racial violence that took place in the South after the Civil War, Finkelman noted "the striking changes in the law of race relations that took place in the North – especially Bingham's home state of Ohio" as the first crucial story in understanding the Fourteenth Amendment. He believes that the first story can give insight into the legal and political history that shaped "Bingham's thoughts about race and his aspirations for a racially just society."[16] What Finkelman kept in mind as the legal and political history behind the ideas of the Fourteenth Amendment was no other than the history of Ohio abolitionists' antislavery struggle to adopt personal liberty laws, in other words, that of the antislavery politics which was dominated by, and radicalized by the development of, the personal liberty politics in the antebellum period.

All things considered, it was not incidental that Ohio's radical Republicans such as Ashley and Bingham played leading roles in carrying out various personal liberty legislation in Congress. Their roles and abilities as not only authors of such personal liberty legislation as the Thirteenth and Fourteenth Amendments but also as floor managers in passing them were instrumental in the success of those radical measures. Indeed, if it were not for the Ohio radical Republicans such as Ashley and Bingham, it is not clear who would have initiated such radical legislation or successfully shepherded it through Congress. Only because the Ohio radicals did not forget their unfinished work in the completion of personal liberty politics, they did not hesitate to undertake the task of adopting personal liberty laws at national level.

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[15] Nelson, *The Fourteenth Amendment*, 72-80.

[16] Finkelman, "John Bingham and the Background to the Fourteenth Amendment," 671-72.

By launching personal liberty legislation and even by succeeding in passing it at every critical moment, furthermore, they even revolutionized the meaning of the Civil War, which was not to restore the Union but to recreate the Union through a radical and fundamental change to the Constitution and race relations. This was also possible only because the Ohio radicals were in the vanguard of the antislavery struggle to repudiate the federal Fugitive Slave Law and develop radical personal liberty politics.

Indeed, the Fourteenth Amendment was a radical change to the Constitution and racial relations. Finkelman asserted that the origins of the Fourteenth Amendment lie in the antislavery politics of Ohio.[17] However, to be exact, the origins of the Fourteenth Amendment lie in the antislavery politics of Ohio which was radicalized by the antislavery struggle to adopt personal liberty laws. To be more exact, the origins of the Amendment lie in the personal liberty politics of Ohio.

[17] Paul Finkelman, "Race, Slavery, and Law in Antebellum Ohio," in *The History of Ohio Law*, ed. Michael Les Benedict and John F. Winkler, 2 vols. (Athens: Ohio University Press, 2004), 2: 775.

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Liberty Hall (Cincinnati)
Lower Sandusky Whig
Marietta Gazette
Mt. Pleasant Philanthropist
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