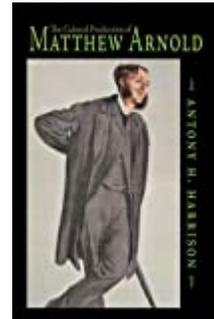




**Stephen Middleton.** *The Black Laws: Race and the Legal Process in Early Ohio.* Athens: Ohio University Press, 2005. xi + 363. \$26.95 (paper), ISBN 978-0-8214-1623-5.



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## A Black Law State

After Frederick Douglass met Abraham Lincoln, the eminent black abolitionist commented that he had never been “more quickly or more completely put at ease in the presence of a great man” than he was by the president. Douglass considered this particularly noteworthy since Lincoln came from a black law state.[1]

Like the Illinois of Lincoln’s adulthood and the Indiana of his youth, Ohio was a black law state. Stephen Middleton provides an authoritative and thorough discussion of how Ohio’s blacks laws emerged, evolved, and ended.

The Northwest Ordinance of 1787 organized the territory of which Ohio was a part. Article VI of the Ordinance famously, though imperfectly, forbade slavery in the territory. It was imperfect because settlers used indentures to evade the prohibition while Territorial Governor Arthur St. Clair argued that the prohibition could not be an *ex post facto* one and therefore did not emancipate slaves already in the territory.

At the time of statehood, there were few blacks in Ohio and discriminatory legislation seemed unnecessary.

But within a few years, white Ohioans became concerned at what seemed a growing black population. They began to institute black laws. The initial black law of 1804 and its 1807 revision required blacks to register their freedom when entering the state and to post a bond of \$500 as guarantee they would not become a public charge. The 1807 law also prohibited African Americans from testifying in court proceedings in which whites were involved and made it illegal to hire an African American who did not have a certificate of freedom. The public school system Ohio established in 1829 did not provide for the education of black children. African Americans also could not serve on juries, vote, or join the militia.

From the earliest period, opponents challenged these black laws on grounds of fairness and humanity. Some feared that the testimony law allowed criminals to go free and opened the black community to exploitation. If blacks could not testify against whites who stole from or harmed them, they became easy prey for white criminals. Courts grappled with the status of mixed-race individuals, finding that those who appeared white or who had a predominance of white ancestry might be free from

the discriminatory rulings of the black laws. White and black Ohioans worried that fugitive slave laws opened even free blacks to the risk of kidnapping. After the rise of the abolitionist movement in the 1830s, activist blacks and whites challenged such discrimination. Although Middleton makes clear the many setbacks this early civil rights movement faced, he also details their successes, culminating in the repeal of many of the black laws in 1849. As part of a political compromise between the Democrats and the Free Soilers, in that year the Ohio legislature removed the requirements that blacks immigrating to Ohio register and pay a bond, abolished the prohibition on black court testimony, and eliminated the employment restrictions. It did, however, leave in place prohibitions on black voting and jury service. Although the legislature now provided for black public school education, it was to be in a largely segregated system.

Middleton includes a chapter on fugitive slave legislation, largely the purview of federal law. Nonetheless, many of Middleton's court cases and examples involve runaway slaves and the topic is intertwined with the subject of the black laws. Fear of being inundated with runaway slaves motivated much of the discriminatory legislation. Nonetheless, Ohio gained a reputation as hostile territory for masters attempting to recover their fugitives. Although Ohio instituted a state fugitive law in 1839, revulsion against the man-stealers, often professional slavecatchers, who seized blacks claiming them to be runaways, prompted its repeal four years later. By the 1850s, the presumption in Ohio was that blacks who came to the state automatically became free unless they were fugitives. What this meant was that Kentucky slaveowners could no longer travel north of the Ohio River with their servants and expect Ohioans to recognize their right to sojourn briefly in that state with their slaves. Nor could Kentuckians any longer hire their slaves out to work north of the river.

The limitations of Middleton's sources mean that there are few black voices in the early chapters. Although he promises that the book will detail an active resistance to oppression, not until his narrative enters the antebellum period can he really do that. Too often the "legal process" promised in the title is one driven by the whites who made the laws, adjudicated them, and revised them.

My chief frustration with Middleton's book, however, is that he talked too much about things I already knew

and not enough about the things I do not know and would like to. Discussions of Article VI, population trends in Ohio, national politics, and other subjects were already familiar. But Middleton seemed to pass over interesting possibilities. For example, throughout the book, I longed to know more about the judges whose decisions seemed so important in shaping implementation of the black law. Middleton frequently mentions Ohio Supreme Court Justice Ebenezer Lane who rendered many interpretations of the black laws that mitigated their discriminatory nature. Who was he? What motivated him? Middleton does not say. Middleton repeatedly refers to the admixture issue, meaning that persons of predominantly white descent could escape the black laws. I longed for some discussion of this fascinating loophole in terms of American ideas of race. It has long been a truism that while Latin Americans recognized wider numbers of multiracial categories, the racial system of the United States admitted only two categories: black and white. Any amount of African American ancestry, no matter how limited, put one in the former category. Middleton's work potentially adds to the increasingly sophisticated discussion of American ideas of race but he does not explore that subject. Middleton's discussion of the Civil War and Reconstruction and their impact on discriminatory legislation is also all too brief. He mentions that Ohio passed its first anti-miscegenation law in 1861 forbidding whites and blacks from marrying each other. In 1876, the Ohio Supreme Court overturned the segregated public school system. Given that segregation of public schools lasted in other places until a short fifty years ago, this topic begs for elaboration. Finally, Middleton tells us that Ohio black laws were not definitively repealed until 1886. But as he spends only twenty pages on the quarter century between the outbreak of the Civil War and that repeal, I longed for a more complete discussion of developments in Ohio leading to that repeal.

One hopes that Middleton will explore some of these questions in later work. In the meantime, anyone interested in the Midwestern black laws should consult this book. The reader will enter the world experienced by former slave John Malvin who expected to be welcomed in Ohio but found it not that different from Virginia.

Note

[1] William Lee Miller, *Lincoln's Virtues: An Ethical Biography* (New York: Knopf, 2002), 41.

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