

2003

# The Struggle for School Desegregation in Cincinnati Before 1954

Davison M. Douglas

*William & Mary Law School*, [dmdoug@wm.edu](mailto:dmdoug@wm.edu)

---

## Repository Citation

Douglas, Davison M., "The Struggle for School Desegregation in Cincinnati Before 1954" (2003). *Faculty Publications*. 114.  
<https://scholarship.law.wm.edu/facpubs/114>

## THE STRUGGLE FOR SCHOOL DESEGREGATION IN CINCINNATI BEFORE 1954

Davison M. Douglas\*

For many observers, de jure school segregation prior to the Supreme Court's 1954 decision in *Brown v. Board of Education*<sup>1</sup> was essentially a southern phenomenon, while racial separation in northern schools was a function of residential patterns, not deliberate attempts to engage in racial segregation.<sup>2</sup>

But many northern school districts did engage in explicit school segregation prior to *Brown*.<sup>3</sup> The Ohio legislature, for example, excluded black children from public schools prior to 1849 and explicitly authorized local school districts to operate racially segregated schools between 1849 and 1887. Even though the Ohio legislature repealed its

---

\* Arthur B. Hanson Professor of Law and Director, Institute of Bill of Rights Law, William and Mary School of Law. Professor Douglas presented this essay as a special lecture at the University of Cincinnati College of Law on April 9, 2002. He is presently completing a book on northern school segregation prior to the Supreme Court's landmark decision in *Brown v. Board of Education*. He thanks David Blessing for his research assistance in connection with the preparation of this Article, and the Spencer Foundation and National Academy of Education for their financial support.

1. 347 U.S. 483 (1954).

2. See, e.g., GUNNAR MYRDAL, AN AMERICAN DILEMMA: VOLUME II: THE NEGRO PROBLEM AND MODERN DEMOCRACY 879, 945 (1944) (asserting that in the North, "Negroes have practically the entire educational system flung open to them without much discrimination," that it "is unnecessary to take up the Negro school in the North since it hardly exists as a separate entity," and that "housing segregation" played an important role in northern segregation); James M. McPherson, *Abolitionists and the Civil Rights Act of 1875*, 52 J. OF AMER. HIST. 493, 495 (1965) (claiming that "[p]ublic schools in many parts of New York, New Jersey, Pennsylvania, Ohio, Illinois, and Indiana—where the large majority of northern Negroes lived—remained segregated until the last two decades of the nineteenth century," even though many school districts in each of those states continued to operate segregated schools until the middle of the twentieth century); Christine Rossell, *The Convergence of Black and White Attitudes on School Desegregation Issues During the Four Decade Evolution of the Plans*, 36 WM. & MARY L. REV. 613, 617 (1995) (arguing that the dearth of northern school desegregation litigation during the 1950s and 1960s was due to the fact that litigation during those years was limited to states that "had at some time operated a dual school system," ignoring the fact that many northern state legislatures expressly permitted school segregation during the nineteenth century—and in Indiana's case, the twentieth century—and that many local school districts in the North continued to operate dual school systems until the 1950s even after state law prohibited them from doing so).

3. Racial separation in northern schools during the pre *Brown* era was frequently due to residential patterns, but in many instances, this separation was far more deliberate, in violation of state laws prohibiting racial separation. School administrators in dozens of northern school districts assigned black children to separate "colored schools" irrespective of geographic location in a manner identical to the southern pattern. Other school administrators assigned black and white children to separate classrooms within the same school building, or placed black children into an annex adjacent to a main school building reserved for white children. Some fenced off racially separate playgrounds. In many communities, racially gerrymandered school district lines or racially conscious school transfer policies insured the racial homogeneity of northern schools. See generally Davison M. Douglas, *The Limits of Law in Accomplishing Racial Change: School Segregation in the Pre-Brown North*, 44 UCLA L. REV. 677, 705-10 (1997).



legislation authorizing school segregation in 1887, and courts, when called upon, held school segregation to be unlawful, school segregation nevertheless persisted in parts of Ohio until the 1950s as many local school districts continued to assign children to school on the basis of race despite the illegality of such action.<sup>4</sup>

In Cincinnati, black children, who had been excluded from the city's public schools until the middle of the nineteenth century, and who were thereafter segregated into racially separate schools, won the legal right to attend racially mixed schools in 1887 along with black children throughout Ohio. But separate schools for black children were maintained in Cincinnati until the middle of the twentieth century, as were other forms of racial discrimination such as the exclusion of black children from school swimming pools and other extracurricular activities and the exclusion of black teachers from racially mixed schools.<sup>5</sup>

How could racial segregation persist in Cincinnati (and in other parts of Ohio) after the state legislature withdrew legislative authority for such segregation in 1887 and the Ohio Supreme Court declared school segregation unlawful the following year?<sup>6</sup> The persistence of school segregation suggests the difficulty of enforcing legal norms in the face of cultural opposition. Separate schools for black children were maintained in Cincinnati and other parts of the state until the 1950s because whites—and many blacks—preferred such racial separation. In the face of this broad support for school segregation, appeals to the Cincinnati School Board to reverse these racially discriminatory patterns proved ineffectual. During the early 1950s, however, in the wake of growing black demands and broader cultural support for an end to explicit racial separation, the Cincinnati School Board finally took action to end its longstanding retention of separate black schools and the exclusion of black teachers from racially mixed schools. As would be true across the North, however, this conversion to race-neutral pupil assignment was made considerably easier by the fact that entrenched residential segregation kept the majority of black and white children in Cincinnati in separate schools.

---

4. Many Ohio school officials have been unwilling to admit this fact. For example, in 1959, the Dayton, Ohio, school superintendent wrote that "to the best of my knowledge Dayton has never maintained legally segregated schools." JOSEPH WATRAS, *POLITICS, RACE, AND SCHOOLS: RACIAL INTEGRATION, 1954-1994*, at 89 (1997). In making this claim, the school superintendent ignored the fact that his city maintained explicitly and notoriously segregated schools from the 1920s until the early 1950s in open disregard of a 1926 decision of the Ohio Supreme Court ordering an end to school segregation in that city. *Bd. of Educ. v. State ex rel. Reese*, 151 N.E. 39 (Ohio 1926).

5. See *infra* text accompanying notes 263-90.

6. *Bd. of Educ. v. State ex rel. Gibson*, 16 N.E. 373 (Ohio 1888).

## I. ANTEBELLUM BLACK EDUCATION IN OHIO

During the first half of the nineteenth century, a common school movement to establish publicly supported, nonsectarian schools developed throughout the North. This movement, which built on the urban charity schools developed at the end of the eighteenth century, expanded significantly during the 1830s and 1840s.<sup>7</sup> Those educators at the center of the common school movement emphasized the importance of inculcating civic and moral virtue in order to preserve America's republican form of government. The majority of newly promulgated state constitutions during the eighteenth and early nineteenth centuries cited education as important to the preservation of civil society and republican self-government. Ohio's first constitution, for example, described education as "essentially necessary to good government."<sup>8</sup> Cincinnati's first superintendent of education urged public education to "Americanize" immigrant children so that they might embrace principles of republicanism.<sup>9</sup> The link between education and the stability of the republic became an article of faith in the early nineteenth century.<sup>10</sup>

In connection with this goal of assimilation, many saw education as a means of reducing the social conflict, crime, and violence that accompanied the significant trend towards urbanization in antebellum America.<sup>11</sup> A legislative committee in Ohio commented in 1825: "A wise legislature will endeavor to prevent the commission of crimes—not only by the number and rigor of her penal statutes—but by affording the whole rising generation, the means of moral and virtuous education."<sup>12</sup> Ohio's first commissioner of common schools, Hiram Barney, explained the benefits of education in 1856: "you not only secure the community against the depredations of the ignorant and the criminal, but you bestow upon it, instead, productive artisans, good citizens, upright jurors

---

7. John B. Reid, *Race, Class, Gender and the Teaching Profession: African-American School Teachers of the Urban Midwest, 1865-1950*, at 14 (1996) (unpublished Ph.D. dissertation, Michigan State University) (on file with Michigan State University Libraries); Maureen Anne Reynolds, *Politics and Indiana's Public Schools During the Civil War Era, 1850-1875*, at 3 (1997) (unpublished Ph.D. dissertation, Indiana University) (on file with Indiana University Libraries).

8. Amory Mayo, *Education in the Northwest During the First Half Century of the Republic, 1790-1840*, REPORT OF THE COMMISSIONER OF EDUCATION 1531, 1538 (1896).

9. Janet Miller, *Public Elementary Schools in Cincinnati 1870-1914*, 38 CINCINNATI HIST. SOC'Y BULL. 83, 84 (1980).

10. DAVID TYACK ET AL., *LAW AND THE SHAPING OF PUBLIC EDUCATION, 1785-1954*, at 14, 20, 30 (1986).

11. DAVID B. TYACK, *THE ONE BEST SYSTEM: A HISTORY OF AMERICAN URBAN EDUCATION* 30 (1974).

12. R. DOUGLAS HURT, *THE OHIO FRONTIER: CRUCIBLE OF THE OLD NORTHWEST, 1720-1830*, at 383 (1996).



and magistrates, enlightened statesmen, scientific discoverers and inventors, and dispensers of a pervading influence in favor of honesty, virtue, and true goodness."<sup>13</sup> Cincinnati black educator John Gaines made a similar argument for black education: "just in proportion as she educates her children, just in the same proportion will poverty and crime diminish."<sup>14</sup>

But many Ohioans did not include African Americans in their common school vision. Ohio excluded all black children from the public schools by statute until the middle of the nineteenth century. This exclusion is striking in light of the state's rhetorical commitment to education as a means of inculcating certain values among its citizenry that would reduce anti-social behavior and help preserve republican government. But many school officials in Ohio did not consider blacks worthy of assimilation or participation in the governing process to warrant inclusion in the common school system.<sup>15</sup>

What accounts for this exclusion of black children from the common schools of Ohio? Throughout much of the antebellum era, strong anti-black sentiment loomed large in parts of the North. During the first half of the nineteenth century, many whites embraced the view that race is "a matter of biological reality, permanent and inescapable, and that character and behavior are inextricably tied to this reality,"<sup>16</sup> rejecting eighteenth-century notions of racial differences grounded in environmental and cultural differences. Phrenologists and ethnologists classified African Americans as intrinsically different from whites, and "lacking in certain moral and mental capacities."<sup>17</sup> As Carl Kaestle has noted, "[n]atural philosophers of the antebellum period forged theories about the separate creation of the races, speculated that blacks and whites were of different species, and fretted that an increase in the black

---

13. ROBERT L. MCCAUL, *THE BLACK STRUGGLE FOR PUBLIC SCHOOLING IN NINETEENTH-CENTURY ILLINOIS* 7-8 (1987). One of Cincinnati's early superintendents of education articulated one of the purposes of the common schools as eliminating the problem of "uncared for youth who roam the streets of our cities and towns, growing up ignorant in all that is good, and wise in all that is evil." Miller, *supra* note 9, at 84.

14. Paul Kessen, *Segregation in Cincinnati Public Education: The Nineteenth Century Black Experience* 96 (1973) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with University of Cincinnati Libraries).

15. Leonard Ernest Erickson, *The Color Line in Ohio Public Schools, 1829-1890*, at 123 (1959) (unpublished Ph.D. dissertation, The Ohio State University) (on file with The Ohio State University Libraries) (one Ohio politician questioned the need to educate blacks since they could not vote or participate in the governing process of the state).

16. Bruce Russell Dain, *A Hideous Monster of the Mind: American Race Theory, 1787-1859*, at 14 (1996) (unpublished Ph.D. dissertation, Princeton University) (on file with Princeton University Libraries).

17. EDDIE S. GLAUDE, *EXODUS! RELIGION, RACE AND NATION IN EARLY NINETEENTH CENTURY BLACK AMERICA* 61 (2000).

population would cause the downfall of the republic."<sup>18</sup> By the middle of the nineteenth century, white conceptions of African Americans as inherently inferior to whites were widespread in much of the North.<sup>19</sup> Such views contributed to the notion among many whites that blacks could never be incorporated into the body politic.

To be sure, the racial climate in the antebellum North was not static, varying significantly over time and between states (and even within certain states). Ohio, where racial attitudes sharply differed between the state's southern counties and the Western Reserve in the state's northeast corner, enacted harsh Black Laws during the early nineteenth century, but repealed many of those laws during the late 1840s.<sup>20</sup> In Cincinnati, many whites resisted black education during the 1830s, even to the point of attacking a black private school,<sup>21</sup> but the city's abolitionist newspaper, *The Philanthropist*, championed black education and scolded those whites who refused to support it.<sup>22</sup> This divergence of white views towards African Americans would continue for the next century.

Racial antagonisms were present throughout much of the North, but were particularly harsh in the midwestern states of Ohio, Indiana, and Illinois.<sup>23</sup> Antipathies towards blacks in the Midwest were due in part to the fact that many white midwesterners had immigrated from southern states—particularly neighboring Virginia and Kentucky—bringing with them racist attitudes.<sup>24</sup> Anti-black feeling was particularly

18. CARL F. KAESTLE, *PILLARS OF THE REPUBLIC: COMMON SCHOOLS AND AMERICAN SOCIETY, 1780-1860*, at 88 (1983).

19. GLAUDE, *supra* note 17, at 65-67; LORMAN RATNER, *POWDER KEG: NORTHERN OPPOSITION TO THE ANTISLAVERY MOVEMENT 1831-1840*, at 19 (1968); William Louis Lang, *Black Bootstraps: The Abolitionist Educators' Ideology and the Education of the Northern Free Negro, 1828-1860*, at 60 (1974) (unpublished Ph.D. dissertation, University of Delaware) (on file with University of Delaware Libraries).

20. Ohio was also the most important state in the Underground Railroad movement for escaped slaves and home to many staunch abolitionists, as well as racially liberal Oberlin College. Ann L. Robisch, *Educational Segregation and Desegregation in Ohio, Especially Cincinnati* 21 (1961) (unpublished M.A. Thesis, University of Cincinnati) (on file with University of Cincinnati Libraries).

21. Gregory R. Corr, *Black Politics and Education in Cincinnati, 1870-1890*, at 47 (1984) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with University of Cincinnati Libraries).

22. In 1836, *The Philanthropist* chastised Cincinnati's clergy for their failure to support black education:

And as many of your hearers view your silence on the subject of instructing the colored child, inconsistent with your frequent and earnest call for contributions to support schools for the instruction of poor white children, you would extricate us from a very unpleasant dilemma, by explaining how the two things may be reconciled.

Robisch, *supra* note 20, at 44 (quoting *The Philanthropist*, Feb. 12, 1836).

23. EUGENE H. BERWANGER, *THE FRONTIER AGAINST SLAVERY: WESTERN ANTI-NEGRO PREJUDICE AND THE SLAVERY EXTENSION CONTROVERSY* 4 (1967).

24. FRANK U. QUILLIN, *THE COLOR LINE IN OHIO: A HISTORY OF RACE PREJUDICE IN A TYPICAL NORTHERN STATE* 25, 65 (1913).



intense in those counties just north of the Ohio River in southern Ohio, Indiana, and Illinois that were populated primarily by whites of southern origin who feared an influx of southern blacks. Indeed, as southern states imposed additional restrictions on free blacks during the 1830s and 1840s, scores of southern blacks crossed the Ohio River into the lower Midwest. Many white midwesterners during the antebellum era would concede blacks the right to be free of slavery, but little more. De Tocqueville offered this observation of northern attitudes towards blacks in the 1830s: "Race prejudice seems stronger in those states that have abolished slavery than in those where it still exists, and nowhere is it more intolerant than in those states [of the Midwest] where slavery was never known."<sup>25</sup>

Many northern whites viewed African Americans as unwanted competition for jobs. White workers often refused to work with blacks and sometimes would strike to force them from a work site.<sup>26</sup> Some white skilled laborers refused to hire black apprentices, forcing black workers to scramble for unskilled jobs.<sup>27</sup> Many blacks complained that even abolitionists would not hire them.<sup>28</sup> The white popular press played to fears of blacks taking white jobs.<sup>29</sup> These concerns extended to emancipated slaves as well. The *Cincinnati Enquirer* editorialized in 1861: "The hundreds of thousands, if not millions of slaves it will emancipate will come North and West, and will either be competitors with our white mechanics and laborers, degrading them by the competition, or they will have to be supported as paupers and criminals at the public expense."<sup>30</sup>

In some northern cities, racial conflicts erupted into violence. The racial conflict in Cincinnati, the nation's sixth largest city in the mid-

25. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 343 (1969).

26. LEONARD P. CURRY, *THE FREE BLACK IN URBAN AMERICA, 1800-1850*, at 174-95 (1981); CARTER G. WOODSON, *THE EDUCATION OF THE NEGRO PRIOR TO 1861: A HISTORY OF THE EDUCATION OF COLORED PEOPLE OF THE UNITED STATES FROM THE BEGINNING OF SLAVERY TO THE CIVIL WAR* 286, 187 (1915); Marcy S. Sacks, *We Rise or Fall Together: Separatism and the Demand for Equality by Albany's Black Citizens, 1827-1860*, 20 *AFRO-AMERICANS IN NEW YORK LIFE AND HISTORY* 7, 9 (1996); Leslie H. Fishel, Jr., *The North and the Negro, 1865-1900: A Study in Race Discrimination* 41 (1953) (unpublished Ph.D. dissertation, Harvard University) (on file with Harvard University Libraries).

27. For example, the president of a mechanical association was "tried" by members of his organization in Cincinnati in the 1830s for assisting a black person to learn a trade. Carter Woodson, *The Negroes of Cincinnati Prior to the Civil War*, 1 *J. OF NEGRO HIST.* 1, 5 (1916).

28. Sacks, *supra* note 26, at 14.

29. Patrick Joseph Rael, *The Lion's Painting: African-American Thought in the Antebellum North* 110-112 (1995) (unpublished Ph.D. dissertation, University of California at Berkeley) (on file with University of California at Berkeley Libraries).

30. V. JACQUE VOEGELI, *FREE BUT NOT EQUAL: THE MIDWEST AND THE NEGRO DURING THE CIVIL WAR* 6 (1967).

nineteenth century,<sup>31</sup> was particularly dramatic. Enforcement of Ohio's harsh Black Laws, which required in part that each black person post a \$500 surety bond guaranteeing good behavior in order to remain in the state, had been quite lax during the early nineteenth century. But a sharp influx of black migrants to the city during the late 1820s, along with a growing tide of German and Irish immigrants, provoked conflict, as these groups competed for work in the Cincinnati economy.<sup>32</sup> Many whites sought to fortify the color line by insisting on enforcement of the Black Laws. In response to these demands, the city's trustees announced in 1829 that they would enforce the bond requirement, giving the entire black population sixty days to comply or leave the city. In the meantime, an impatient mob of whites attacked the city's black population. In response to this eruption of white hostility, about half of the city's black population migrated to Canada.<sup>33</sup>

Racial conflict and calls for black expulsion in Cincinnati would continue. Rioters in 1836 destroyed the printing press of the city's abolitionist newspaper, *The Philanthropist*, and dumped it into the Ohio River.<sup>34</sup> In 1841, renewed calls for the expulsion of Cincinnati's entire black population, motivated in part by job competition,<sup>35</sup> helped trigger

31. William Check & Aimee Lee Check, *John Mercer Langston and the Cincinnati Riot of 1841*, in *RACE AND THE CITY: WORK, COMMUNITY, AND PROTEST IN CINCINNATI, 1820-1970*, at 30 (Henry Louis Taylor, Jr. ed., 1993).

32. The black population of Cincinnati increased from about six hundred to over two thousand between 1826 and 1829. Nancy Bertraux, *Structural Economic Change and Occupational Decline Among Black Workers in Antebellum Cincinnati*, in *RACE AND THE CITY: WORK, COMMUNITY, AND PROTEST IN CINCINNATI, 1820-1970*, at 129-30 (Henry Louis Taylor, Jr. ed., 1993); Check & Check, *supra* note 31, at 32.

In 1825, the Cincinnati newspaper, *Liberty Hall*, claimed that "the rapid increase of our black population . . . is of itself a great evil" and that it "is time to take measures for . . . (the Negro's removal)." W. A. Montgomery, *Racial History of the Cincinnati and Suburban Public Schools, As It Has Been Influenced By Instances of Racial Discriminatory Intent and Purpose* 16 (1983) (unpublished paper on file with William & Mary Law Library). An 1827 committee of the Ohio legislature concluded:

The negroes are in many parts of the State a serious political and moral evil.... [T]he colored population has a tendency to depress and discourage the white laboring classes of the State, who are her source of wealth and peace. Destitute of the blessings of education and of moral and religious instruction, ... [Negroes] form an excrescence on the body politic, which, if it cannot be removed, should not be permitted to increase by emigration.

QUILLIN, *supra* note 24, at 55-56. A subsequent Ohio legislative committee agreed in 1832:

White men will not degrade themselves in society by adopting the employment of, and coming into competition with the blacks, a people of a degraded and dependent condition and of dissolute conduct, a people upon whom society has affixed the brand of infamy from their birth; with whom it is considered disgraceful for the meanest white man to associate.

QUILLIN, *supra* note 24, at 57.

33. Bertraux, *supra* note 32, at 129; Richard C. Wade, *The Negro in Cincinnati 1800-1830*, 39 J. OF NEGRO HIST. 43, 51-56 (1954); Woodson, *supra* note 27, at 6-7.

34. Montgomery, *supra* note 32, at 20.

35. *Id.* at 21.



"the most destructive and violent rioting in the city's history."<sup>36</sup> The riot prompted additional black migration to Canada and more than one hundred blacks to post the hated surety bond.<sup>37</sup> Stung by this increase in white hostility, black leaders called a national Negro convention in Philadelphia in 1830 to assist the beleaguered black community in Cincinnati.<sup>38</sup> In addition to offering support to those seeking to migrate to Canada, the convention leaders decried the "vulgar race prejudice which reigns in the breasts" of working class whites.<sup>39</sup>

Historian Eric Foner has suggested that the more fluid social structure of the Midwest, which allowed some blacks to rise economically and socially, may have contributed to the region's particularly strong racial animosities. Those blacks arriving in the Midwest were better able to challenge the status and prerogatives of whites than were blacks living back East, provoking white fears and resentments.<sup>40</sup> As an English visitor to Cincinnati noted in 1834, many whites spoke of blacks "with a degree of bitterness that dictated a disposition to be more angry with their virtues than with their vices."<sup>41</sup> The *Cincinnati Daily Gazette* wrote in 1841 of white workers reacting to black prosperity "with jealousy and heart burning."<sup>42</sup>

The northern Democratic Party, which gained increasing power during the first half of the nineteenth century, played an important role in fostering white antagonisms towards blacks. Many Democratic politicians, virulently anti-black, portrayed African Americans "as an enemy and one to be severely dealt with."<sup>43</sup> Indeed, anti-black rhetoric emerged as a major weapon of the northern Democratic Party during the antebellum era.<sup>44</sup> An Ohio politician in 1833 described free blacks

36. Check & Check, *supra* note 31, at 48.

37. For example, within a year of the 1841 riot, nine of the city's most respected black families had migrated to Canada. DAVID GRIMSTED, *AMERICAN MOBING, 1828-1861: TOWARD CIVIL WAR* 62 (1998); Check & Check, *supra* note 31, at 48-49. Once again, the printing press of *The Philanthropist* wound up in the Ohio River. Montgomery, *supra* note 32, at 21.

In 1862, Cincinnati would again be torn by race-inspired riots, as white dock workers, fearing black competition, attacked local blacks. DAVID A. GERBER, *BLACK OHIO AND THE COLOR LINE 1860-1915*, at 28-29 (1976).

38. ELIZABETH RAUN BETHEL, *THE ROOTS OF AFRICAN-AMERICAN IDENTITY: MEMORY AND HISTORY IN FREE ANTEBELLUM COMMUNITIES* 124 (1997).

39. WOODSON, *supra* note 26, at 286.

40. ERIC FONER, *FREE SOIL, FREE LABOR, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR* 262 (1970).

41. Check & Check, *supra* note 31, at 44-45.

42. Woodson, *supra* note 27, at 13.

43. Robert Control, *Law, Politics and Race in Urban America: Towards a New Synthesis*, 17 *RUTGERS L.J.* 483, 507-08 (1986).

44. VINCENT P. FRANKLIN, *THE EDUCATION OF BLACK PHILADELPHIA: THE SOCIAL AND EDUCATIONAL HISTORY OF A MINORITY COMMUNITY, 1900-1950*, at 10 (1979).

as "the only evil" imperiling the "the perfection of our society and political system."<sup>45</sup> During the 1850s, Ohio Republican Governor Salmon Chase complained of the Ohio Democratic Party that all they wanted was "simply to talk about the universal nigger question, as they call it. All that they seem to say is 'nigger, nigger, nigger.'"<sup>46</sup>

This deep-seated anti-black feeling had many manifestations during the first half of the nineteenth century. For example, most northern states either considered or did ban the entry of black immigrants during the antebellum era.<sup>47</sup> Ohio, as part of its Black Laws, required blacks to certify their free status, to register with county officials, and to post a security bond guaranteeing their good behavior in order to settle in the state, and made it illegal to hire a black person who had not met these statutory requirements (although the state legislature repealed all of these provisions in 1849).<sup>48</sup> Ohio legislators asserted various justifications for these restraints on blacks. One legislator commented in 1838: "It has been the settled policy of Ohio, evidenced by early and continued legislative enactments, that her population should be a population of whites."<sup>49</sup> Another legislator commented in 1840:

however much philanthropists feel it their duty to meliorate the condition or elevate the character of the black race, human legislation can never remove distinctions in color made by the God of Nature . . . . Our prosperity as a State, depends much upon the industry, virtue and intelligence of our citizens, and to encourage an ignorant and degraded race, to come and settle among us, would . . . be repugnant to our most vital and dearest interests.<sup>50</sup>

The Ohio Black Laws were not widely enforced, and efforts at repeal were frequent, but they did reflect the intense anti-black feeling of many white midwesterners. On some occasions, the bond, registration, and exclusion requirements were legally enforced and on other occasions they were enforced by vigilante violence.<sup>51</sup> As noted, white insistence on

---

45. PAUL GOODMAN, *OF ONE BLOOD: ABOLITIONISM AND THE ORIGINS OF RACIAL EQUALITY* 20 (1998).

46. FONER, *supra* note 40, at 264.

47. WILLIAM M. BANKS, *BLACK INTELLECTUALS: RACE AND RESPONSIBILITY IN AMERICAN LIFE* 12 (1996); Fishel, *supra* note 26, at 29.

48. *THE BLACK LAWS IN THE OLD NORTHWEST: A DOCUMENTARY HISTORY* 15-17 (Stephen Middleton ed. 1993) [hereinafter MIDDLETON]; Paul Finkelman, *Prelude to the Fourteenth Amendment: Black Legal Rights in the Antebellum North*, 17 *RUTGERS L.J.* 415, 434-35 (1986).

But at the 1850 Ohio constitutional convention, a resolution favoring a ban on black immigration into Ohio, promoted in part by the convention's delegates from Cincinnati, failed by a narrow vote of thirty-nine to thirty-five. Robisch, *supra* note 20, at 22.

49. Montgomery, *supra* note 32, at 40.

50. *Id.* at 40-41.

51. *Id.* at 11a.



enforcement of the bond requirement in Cincinnati in 1829 forced the departure of half the city's black population. A newspaper editor in the Western Reserve of Ohio opposed exclusion legislation as immoral, but made clear his lack of enthusiasm for black settlement: "We have no special affection for negroes. We neither desire their companionship or their society . . . . We would be glad if there was not one in the State or one in the United States."<sup>52</sup>

Many whites in the Midwest, including Ohio, also feared the migration of emancipated slaves into their states. The Kentucky constitutional convention of 1850 promised to imprison any emancipated slave who did not leave the state.<sup>53</sup> Other southern states enacted similar legislation.<sup>54</sup> Ohio, Indiana, and Illinois, each of which bordered Kentucky, were prime targets for emancipated or runaway slaves.<sup>55</sup> In the wake of Lincoln's Emancipation Proclamation, tens of thousands of white Ohioans, fearing an unwelcome flood of freed slaves into their communities, petitioned the state legislature to take additional action to bar black settlement in the state.<sup>56</sup>

Ohio imposed other disabilities on blacks during the antebellum era as well. For example, no black person could vote in Ohio, as was the case throughout the North outside of New England and New York. Moreover, Ohio barred African Americans from testifying against whites in court, giving rise to severe abuse of blacks who entered into contractual relations with whites.<sup>57</sup> The Ohio Supreme Court explained the operation of the statute:

Let a man be Christian or infidel; let him be Turk, Jew or Mahometan; let him be of good character or bad; even let him be sunk to the lowest depths of degradation; he may be witness in our courts if he is not black. If a negro or mulatto, he must be excluded from giving evidence where a white man is a party.<sup>58</sup>

---

52. VOEGELI, *supra* note 30, at 29.

53. EMMA LOU THORNBROUGH, *THE NEGRO IN INDIANA: A STUDY OF A MINORITY* 38-39, 64, n.14 (1957).

54. *Id.* at 56.

55. *Id.* at 40.

56. VOEGELI, *supra* note 30, at 15-17.

57. GERBER, *supra* note 37, at 4; FRANK JOHNSON, *THE DEVELOPMENT OF STATE LEGISLATION CONCERNING THE FREE NEGRO* 96 (1919); MIDDLETON, *supra* note 48, at 245-47, 315; JANE H. PEASE & WILLIAM H. PEASE, *THEY WHO WOULD BE FREE: BLACKS' SEARCH FOR FREEDOM, 1830-1861*, at 156 (1974).

58. *Jordan v. Smith*, 14 Ohio 199, 201 (1846). In upholding the exclusion provision, the Court did concede its harshness. As Justice Hitchcock explained for the Court: "In all my experience, both at the bar and as a member of this court, I cannot recollect a single case in which this law has been found subservient to the ends of justice. On the contrary, its uniform effect has been to prevent justice, both public and private." *Id.* at 204.

The Ohio Constitution also provided that service in the state militia was limited to whites.<sup>59</sup>

As noted, one manifestation of this anti-black feeling in antebellum Ohio was the exclusion of black children from the newly developed common schools. Ohio's first three common school statutes, enacted in 1821, 1825, and 1827, did not specifically exclude African Americans, but no locality appears to have interpreted these laws as extending educational privileges to black children.<sup>60</sup> Finally, in 1829, the Ohio State legislature clarified the situation by expressly providing that the law did not "permit black or mulatto persons to attend the schools hereby established," although the legislature did provide that taxes assessed on the property of blacks should be used, in the discretion of local school trustees, for black education.<sup>61</sup> Two years later, the state legislature simply exempted black owned property from the school tax levy.<sup>62</sup> In a series of school laws enacted throughout the 1830s, the legislature made clear that the common schools were for "the instruction of white youth."<sup>63</sup>

Notwithstanding this ban on black education, a few Ohio communities did allow black children, particularly mulattoes, to attend white schools during the 1830s and early 1840s.<sup>64</sup> But on at least one occasion, white parents successfully sued to force the exclusion of blacks from the public schools; on a second occasion, the threat of a lawsuit forced the exclusion of black children from a public school.<sup>65</sup> Many Ohioans agreed with the state legislator who argued in the mid-1840s that in most of Ohio, "it would require the terrors of the bayonet to people the school with a mixed assemblage of whites and blacks. We cannot permit ourselves to doubt, that gentlemen would shrink with horror from the idea of sending their *own* children to associate with negroes and mulattoes."<sup>66</sup>

But on some occasions, mulatto children managed to remain in white schools in antebellum Ohio despite efforts to remove them. On at least

---

59. MIDDLETON, *supra* note 48, at 14.

60. WILLIAM J. AKERS, CLEVELAND SCHOOLS IN THE NINETEENTH CENTURY 379-82 (1901).

61. MIDDLETON, *supra* note 48, at 34; AKERS, *supra* note 60, at 382.

62. MIDDLETON, *supra* note 48, at 35.

63. *Id.* at 34-36 (quoting 1831 statute).

64. Erickson, *supra* note 15, at 109-10, 180. Moreover, Cincinnati briefly operated a black school during the 1840-1841 school year paid for by taxes on the property of African Americans. *Id.* at 115.

65. In 1842, the Ohio Supreme Court held that a teacher's decision to allow black children to attend a publicly supported school in Greene County violated Ohio state law. *Chalmers v. Stewart*, 11 Ohio 386, 387 (1842). In 1849, eleven black children were expelled from a public school in Massillon when white parents threatened litigation. Erickson, *supra* note 15, at 180.

66. Erickson, *supra* note 15, at 123-24.



two occasions, lawsuits seeking the exclusion of mulatto children from white public schools failed, as the Ohio Supreme Court held in 1843 that children with "more than one-half white blood" were deemed white.<sup>67</sup> In 1855, however, a white teacher in Cincinnati objected to the presence in her classroom of a mulatto child who was 1/32 black. After considerable controversy, the Cincinnati School Board adopted a resolution providing that "such pupils that have in whole or in part African blood in their organization, are . . . only . . . entitled by law to attend the colored schools."<sup>68</sup> Moreover, in 1859, the Ohio Supreme Court reversed its prior definition of "white," holding that those persons "who have any visible taint of African blood" were deemed to be black, even if the child in question was more than half white.<sup>69</sup> The Court justified its decision, which was plainly inconsistent with its contemporaneous decisions construing the right to vote,<sup>70</sup> on the grounds that

[i]f those a shade more white than black were to be forced upon the white youth against their consent, the whole policy of the law would be defeated. The prejudice and antagonism of the whites would be aroused; bickerings and contentions become the order of the day, and the moral and mental improvement of both classes retarded.<sup>71</sup>

---

67. *Lane v. Baker*, 12 Ohio 237, 241 (1843) (child with "more than one-half white blood" is deemed white and can attend school); *see also Williams v. Sch. Dist.*, 1 Wright 578, 580 (1834) (rejecting argument that the court should "resort to the *color* or *complexion*" to determine race and "not inquire of the blood," holding instead that "the term white, as used in the law, describes *blood* and not *complexion*" and hence children who are one-eighth Negro, despite their complexion, are deemed white and can attend school); *Jeffries v. Ankeny*, 11 Ohio 372, 376 (1842) (all persons "nearer white than black, or of the grade between the mulattoes and the whites, were entitled to enjoy every political and social privilege of the white citizen" including voting); *Anderson v. Millikin*, 9 Ohio St. 568, 570 (1859) (if a person "had an equal portion of the blood of each race, the exclusion [on voting] still applied; but if he had a larger proportion of the blood of the white race, he was to be regarded as white").

School authorities in Columbus established a special school for mulatto children during the antebellum era. Erickson, *supra* note 15, at 114. One challenge to mulatto school attendance in Cincinnati failed when the complaining whites could not identify the mulatto child in a class of white children. Woodson, *supra* note 27, at 18.

68. Montgomery, *supra* note 32, at 52-54 (emphasis added).

69. *Van Camp v. Logan*, 9 Ohio St. 406, 408 (1859) (holding that "children of five-eighths white and three-eighths African blood, who are *distinctly* colored and generally treated and regarded as colored children by the community where they reside" are deemed Negro for purposes of right to attend a school for white children) (emphasis added).

70. The Court retained its traditional definition of white when interpreting the right to vote. *See, e.g., Monroe v. Collins*, 17 Ohio St. 665, 685 (1867) (men having "an admixture of African blood, with a *preponderance of white blood*," are deemed white for purposes of voting) (emphasis added); *Anderson*, 9 Ohio St. at 570 (a person with "a larger proportion of the blood of the white race" than of the black race is deemed white for purposes of voting).

71. *Van Camp*, 9 Ohio St. at 412. The Court further explained regarding the legislature's earlier decision to provide for school segregation in Ohio:

For nearly two generations, blacks and mulattoes had been a proscribed and degraded race

In the meantime, black leaders across the antebellum North embraced education as an important aspect of racial uplift. The notion of self-improvement or uplift, involving both mental elevation and moral virtue, was a constant theme in black newspapers, conventions, speeches, and pamphlets during the antebellum era.<sup>72</sup> The Negro convention movement, which constituted one of the first organized efforts to attack the climate of racial oppression in America, flourished on a national and state level from 1830 until 1860 and emphasized the importance of education as a means of achieving self-improvement.<sup>73</sup> An Ohio state convention in 1849, for example, resolved to "give your earnest attention to the universal education of our people."<sup>74</sup> Some of the conventions invoked the democratic principles of the Declaration of Independence and the Revolutionary era to legitimate black claims to fair treatment. For example, an 1834 convention announced:

[O]ur principles are drawn from the book of divine revelation, and are incorporated in the Declaration of Independence, "that all men are born equal, and endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness." Therefore, our only trust is in the agency of divine truth, and the spirit of American liberty.<sup>75</sup>

Recognizing that many whites viewed blacks as inherently degraded, black leaders urged support for education as a means of reversing these attitudes. One of the first Negro national conventions, held in 1832, resolved: "If we ever expect to see the influence of prejudice decrease and ourselves respected, it must be by the blessings of an enlightened education."<sup>76</sup> An 1848 state convention similarly resolved

---

in Ohio. They were debarred from the elective franchise and prohibited from immigration and settlement within our borders, except under severe restrictions. They were also excluded from our common schools and all means of public instruction—incapacitated from serving upon juries, and denied the privilege of testifying in cases where a white person was a party. It would be strange, indeed, if such a state of things had not increased, in the present generation, the natural repugnance of the white race to communion and fellowship with them. Whether consistent with true philanthropy or not, it is nevertheless true, that in many portions, if not throughout the state, there was and still is an almost invincible repugnance to such communion and fellowship.

*Id.* at 410.

72. Rael, *supra* note 29, at Introduction, 18-19, 102-03, 124-28.

73. GOODMAN, *supra* note 45, at 33; TYACK, *supra* note 11, at 110; Reid, *supra* note 7, at 54-55.

74. Corr, *supra* note 21, at 41.

75. *Minutes of the Fourth Annual Convention for the Improvement of the Free People of Colour* (New York, 1834), reprinted in MINUTES OF THE PROCEEDINGS OF THE NATIONAL NEGRO CONVENTIONS 1830-1864, at 29 (Howard Holman Bell ed., 1969) [hereinafter BELL].

76. *Minutes and Proceedings of the Second Annual Convention, for the Improvement of the Free People of Color in these United States* (Philadelphia, 1832), reprinted in BELL, *supra* note 75, at 34.



[t]hat the white people . . . ought not to reproach us with being ignorant, degraded and poor, while they tax our property to support their own poor, and their own blind, deaf and insane, and to educate their own children, while denying to ours the benefits and blessings conferred by this taxation.<sup>77</sup>

Abolitionists—both black and white—urged black education, recognizing the link between learning and emancipation.<sup>78</sup> Anti-slavery societies formed education committees to promote the development of black schools to prepare for “that state in society upon which depends our political happiness.”<sup>79</sup> Black abolitionist Alexander Crummell explained to a group of London abolitionists in 1851: “As the *free* coloured population go up in the scale of intelligence, increase in mental capacity, and demonstrate their intellectual power, the whole fabric of slavery proportionably crumbles and totters.”<sup>80</sup> Even black school children understood the connection between education and abolition. One black student in Cincinnati in the 1840s wrote an essay on the English king, Alfred the Great: “at one time, [Alfred] did not know his a, b, c, but before his death he commanded . . . nations. . . . I think that if colored people study like King Alfred they will soon do away with the evil of slavery.”<sup>81</sup>

When local school authorities barred black children from the public schools, white and black abolitionists helped establish private schools for black children. In Cincinnati, white students at Lane Seminary helped teach black children during the 1830s until the objections of their professors required them to relocate to Oberlin College in the more racially friendly Western Reserve.<sup>82</sup> By the 1840s, Cincinnati was home to six privately supported schools for black children, one of which, Gilmore High School, attracted students from as far away as New Orleans.<sup>83</sup> Some of these private school efforts, however, met with white resistance. On one occasion during the 1830s, a school in a black church was attacked by a white mob.<sup>84</sup>

In the meantime, black Ohioans enjoyed support from the state’s Whig and Free Soil parties, which wielded a critical balance of power

---

77. Herbert Lynn Heller, *Negro Education in Indiana From 1816 to 1869*, at 63 (1951) (unpublished Ed.D. dissertation, Indiana University) (on file with Indiana University Libraries).

78. TYACK, *supra* note 11, at 111.

79. WOODSON, *supra* note 26, at 71-72.

80. Alexander Crummell, *Speech in THE BLACK ABOLITIONIST PAPERS I* (C. Peter Ripley ed.) 276, 277 (1985).

81. Check & Check, *supra* note 31, at 54.

82. Woodson, *supra* note 27, at 7-8.

83. *Id.* at 18-19; Corr, *supra* note 21, at 48.

84. Corr, *supra* note 21, at 47; Montgomery, *supra* note 32, at 35-36.

in the Ohio legislature during the late 1840s.<sup>85</sup> The Western Reserve section of northeast Ohio was particularly supportive of black education. In 1848, after years of petitions from Ohio blacks urging repeal of the Black Laws, including the exclusion of blacks from the public schools, the Ohio legislature finally enacted legislation to *permit* blacks to establish their own separate schools in any school district with at least twenty black children supported by taxes on black-owned property, if such a tax could generate sufficient revenue.<sup>86</sup> In 1849, the state's Black Laws were repealed and the education statute was amended to *require* the establishment of black schools throughout the state unless the school district was willing to admit black children to white schools.<sup>87</sup> In 1853, however, the legislature limited its 1849 legislation, requiring the establishment of black schools only in school districts in which there were more than thirty black children.<sup>88</sup> Districts with too few black children to justify establishment of a separate school were obliged to reserve certain monies so as to make other provision for black education,<sup>89</sup> although there is little evidence that this provision enjoyed compliance.<sup>90</sup>

These legislative changes were resisted in parts of the state, particularly in the state's southern counties, which were Democratic, anti-black strongholds.<sup>91</sup> Many local officials refused to provide funds for separate black schools and it took considerable effort in the black community to ensure that tax monies promised by the new legislation were made available for separate black education.<sup>92</sup> In Cincinnati, home to the state's largest black population and about a thousand school-age black children, two schools were opened in black churches in 1849.<sup>93</sup> But local school officials refused to release any tax monies to the schools' black trustees who had recently been elected by black voters, arguing that their election violated the Ohio Constitution, which

---

85. GERBER, *supra* note 37, at 5.

86. MIDDLETON, *supra* note 48, at 36-38.

87. *Id.* at 38-40. An Ohio state Negro convention in 1849, however, labeled attempts to establish segregated schools as "reprehensible." Corr, *supra* note 21, at 43.

88. MIDDLETON, *supra* note 48, at 41. In 1864, this figure was lowered to twenty-one black children. Erickson, *supra* note 15, at 201.

89. *Id.*

90. Corr, *supra* note 21, at 124.

91. Erickson, *supra* note 15, at 193-98 (discussing efforts to reinstate the Black Laws, including the exclusion of black children from public schools).

92. *Id.* at 206-07.

93. *Id.* at 205-06, 210.



restricted the franchise to white voters.<sup>94</sup> Black parents, interested in procuring the promised monies, initiated litigation, arguing that the withholding of funds for black education violated the newly enacted state education law. In 1850, the Ohio Supreme Court agreed and ordered the Cincinnati school authorities to release funds for black education.<sup>95</sup> The court reasoned that the 1849 education statute had expressly permitted the election of black school trustees by black voters and that such school trustee elections were not covered by the constitutional restriction on the franchise.<sup>96</sup> The court's decision led to the establishment of three black schools in Cincinnati in 1851.<sup>97</sup> Subsequently, the legislature removed (in 1853) and then restored (in 1856) the right of Cincinnati blacks to elect their own school trustees,<sup>98</sup> a practice that would continue until the state legislature mandated unitary school boards in 1873 and thereby eliminated the separate black school board in Cincinnati.<sup>99</sup> The establishment of the separate school board afforded black Cincinnatians the right to hire their own teachers, control their curriculum, and exercise management of their schools; it also afforded them an early exercise of the franchise at a time when blacks were deprived of the right to vote in Ohio.<sup>100</sup>

In the meantime, the number of black students in the publicly supported schools of Cincinnati steadily increased from 417 in 1853 to 1,074 in 1874.<sup>101</sup> But the percentage of black children attending public school in Cincinnati, particularly in the early years, tended to be lower than the comparable percentage for white children. An 1863 Cincinnati school report found that only twenty-three percent of the city's black children were attending public school, compared to one third of the white children.<sup>102</sup>

Black students in Cincinnati fared better than those in many other parts of the state. An 1865 report by the Ohio Commissioner of Education revealed that of the state's 626 school districts that contained

---

94. *Id.* at 206-07. The 1802 Constitution of Ohio provided that "[i]n all elections, all white male inhabitants above the age of twenty-one years . . . shall enjoy the right of an elector." MIDDLETON, *supra* note 48, at 12.

95. *State ex rel Dirs. of E. & W. Sch. Dist. v. Cincinnati*, 19 Ohio 178 (1850).

96. *Id.* at 197-98.

97. Montgomery, *supra* note 32, at 46.

98. MIDDLETON, *supra* note 48, at 40-44.

99. *Id.* at 44-45; Erickson, *supra* note 15, at 207-09; Corr, *supra* note 21, at 49-50, 59.

100. Corr, *supra* note 21, at 80.

101. Erickson, *supra* note 15, at 209.

102. Corr, *supra* note 21, at 51-52. But those attendance figures would improve. From 1875 until 1877, a higher percentage of Cincinnati's black children attended public school than did the city's white children. *Id.* at 94.

black children, only 121 operated black schools.<sup>103</sup> Many school districts had a sufficiently small number of black children that they did not establish a black school, or else required black children to attend school in a neighboring town, a requirement that many children could not meet due to the distance.<sup>104</sup> When some mulatto children were excluded from the schools of Hocking County, Ohio, during the mid-1850s, their father filed suit, alleging that his children were not being provided schooling. The Ohio Supreme Court held that, "whether consistent with true philanthropy or not," the mulatto children could not attend a white school despite the fact that no other schools were available to them.<sup>105</sup> The court reasoned that the segregation law "is one of *classification* and not of *exclusion*"<sup>106</sup> and that mulatto children "are not, as of right, entitled to admission into the schools, organized and set apart . . . for the instruction of white youths."<sup>107</sup> In response, the Ohio Commissioner of Education recommended that the legislature amend the school law to *require* local school districts to admit black children to white schools if no separate schools were provided, but the legislature declined to take such action.<sup>108</sup>

As the antebellum era came to a close, some Ohio blacks took action to combat the state's commitment to school segregation. An 1857 Ohio state convention for colored men called for "the repeal of all laws which make a distinction on account of color," which included the laws requiring school segregation.<sup>109</sup> But it would take three decades to achieve that goal.

---

103. David Gerber, *Education, Expediency, and Ideology: Race and Politics in the Desegregation of Ohio Public Schools in the Late 19th Century*, 13 J. ETHNIC STUD. 1, 3 (1973).

104. Erickson, *supra* note 15, at 239-40.

105. *Van Camp v. Logan*, 9 Ohio St. 406, 410 (1859).

106. *Id.*

107. *Id.* at 415; see *supra* notes 69-71 and accompanying text.

108. Robisch, *supra* note 20, at 48. Those separate black schools established in Ohio during the antebellum era were frequently in dismal condition and far inferior to their white counterparts. Black schools were often housed in cellars or sheds. The Ohio Commissioner of Common Schools commented in an 1859 report that "[m]any of the [black] schools are kept in mere sheds and basements without decent furniture." Mame Charlotte Mason, *The Policy of Segregation of the Negro in the Public Schools of Ohio, Indiana, and Illinois* 16 (1917) (unpublished M.A. Thesis, University of Chicago) (on file with University of Chicago Libraries). In addition to their poor physical condition, black schools during the antebellum era typically received the poorest teachers, most of whom were white. The Ohio Commissioner of Common Schools commented in an 1859 report that in black schools, the "teachers, whether white or colored, are, with few exceptions, poorly qualified and are employed because they can be had at small salaries." *Id.* at 16.

109. Corr, *supra* note 21, at 113. In 1865, the Ohio legislature did consider a bill that would have ended school segregation in the state. The *Cleveland Plain Dealer* ridiculed its prospects: "We don't think there are enough members willing to make fools of themselves to pass this bill." The legislation failed. Montgomery, *supra* note 32, at 57.



## II. SCHOOL DESEGREGATION EFFORTS IN OHIO, 1865-1887

After the conclusion of the Civil War, white hostility towards blacks continued in much of the North. During and immediately after the war, approximately 80,000 southern blacks migrated northward, particularly to the Midwest, which further exacerbated anti-black feeling. Ohio experienced the largest increase in black population of any northern state during the 1860s—about 26,000.<sup>110</sup> Blacks still constituted a fraction of the northern population in 1870, comprising no more than one percent of the population in the North as a whole and only about 2.5 percent in Ohio, but the population increase contributed to an upsurge in anti-black feeling in parts of the North, particularly the lower Midwest.<sup>111</sup>

Black efforts to procure the franchise following the conclusion of the Civil War were met with resistance. Between 1865 and 1867, about half a dozen northern states, including Ohio, voted down referenda that would have permitted blacks to vote.<sup>112</sup> The Ohio Democratic State Convention of 1865 denounced such enfranchisement efforts: "Ohio would become the negro paradise and the white man's wilderness" if blacks received the right to vote.<sup>113</sup> No northern state extended the franchise to blacks during the post-bellum era until 1868, when both Iowa and Minnesota—states with a minuscule black population—approved black suffrage.<sup>114</sup> Indeed, supporters of black suffrage recognized that an amendment to the United States Constitution was the most efficacious way to secure the right to vote in both the North and the South.<sup>115</sup> Even when Congress ratified the Fifteenth Amendment to the United States Constitution that guaranteed black suffrage, a number of northern states balked at ratification. Ohio, for example, having reversed its ratification of the Fourteenth Amendment in 1868, refused to ratify the Fifteenth Amendment in 1869.<sup>116</sup> The

---

110. U. S. DEPT. OF COMMERCE, BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, PART 124-37 (1976); Michael P. Johnson, *Out of Egypt: The Migration of Former Slaves to the Midwest During the 1860s in Comparative Perspective*, in CROSSING BOUNDARIES: COMPARATIVE HISTORY OF BLACK PEOPLE IN DIASPORA 223, 228-29 (Darlene Clark Hine & Jacqueline McLeod eds., 1999).

111. Johnson, *supra* note 110, at 228-29.

112. Robisch, *supra* note 20, at 22 (Ohio rejected black suffrage by a large majority in 1867).

113. QUILLIN, *supra* note 24, at 98.

114. Fishel, *supra* note 26, at 117-18.

115. *Id.* at 118-19.

116. LAWRENCE GROSSMAN, THE DEMOCRATIC PARTY AND THE NEGRO: NORTHERN AND NATIONAL POLITICS 1868-92, at 19 (1976); Fishel, *supra* note 26, at 121.

Ohio State legislature finally ratified the Fifteenth Amendment by one vote after the requisite number of other states had already ratified the Amendment.<sup>117</sup> As the Civil War came to a close, the *Cincinnati Enquirer*, giving voice to the anti-black feeling characteristic of many white northerners, starkly announced: "Slavery is dead, the negro is not, there is the misfortune. For the sake of all parties, would that he were."<sup>118</sup>

After the war, blacks throughout the North, including Ohio, demanded an end to school segregation, emphasizing the harm of racial separation. Indeed, in many northern states, the decade following the conclusion of the Civil War marked the most intense period of anti-segregation activity among African Americans of the entire nineteenth century. Many whites joined the campaign against school segregation, particularly those who had been active in the antebellum movement for abolition.<sup>119</sup>

Those blacks favoring school integration argued, as they had during the antebellum era, that segregation condemned them to second-class citizenship.<sup>120</sup> Frederick Douglass, who launched a nationwide campaign for racially mixed schools upon war's end, condemned "the baleful influence upon the children of the colored race of being taught by separation from the whites that the whites are superior to them."<sup>121</sup> James Poindexter, a black minister in Columbus, explained that with segregation,

[t]he White child imbibes the false idea that the color of his skin makes him the colored child's superior, while the colored child grows sour under the weight of the invidious distinctions made between him and the White child, and in many cases . . . loses that ambition which would be the greatest spur to his success in life.<sup>122</sup>

Those African Americans favoring racially mixed schools conducted their campaign in a variety of ways. In some communities, blacks banded together and petitioned local school authorities to repeal their policy of segregation. Most of these petition efforts failed, but in some communities they succeeded, typically ones with few blacks and a pre-existing inclination among white school authorities to eliminate the cost

117. QUILLIN, *supra* note 24, at 98-102. In 2003, Ohio finally ratified the Fourteenth Amendment. *Ohio OKs 14th Amendment: Equal Protection Issue Ratified After Long, Bitter Fight*, CLEVELAND PLAIN DEALER, Mar. 13, 2003, at A1.

118. Fishel, *supra* note 26, at 70.

119. James M. McPherson, *Abolitionists and the Civil Rights Act of 1875*, 52 J. OF AMER. HIST. 493, 499-510 (1965).

120. FREDERICK A. MCGINNIS, *THE EDUCATION OF NEGROES IN OHIO* 57 (1962); Gerber, *supra* note 103, at 13.

121. McPherson, *supra* note 119, at 501.

122. Gerber, *supra* note 103, at 14.



of dual schools. For example, Toledo desegregated its schools in 1871.<sup>123</sup> Columbus and Dayton did likewise during the early 1880s; concerns about the high cost of separate schools played a role in both cities.<sup>124</sup>

In addition, many Ohio blacks filed lawsuits, challenging school segregation in both state and federal courts in Cincinnati, Franklin County, Clermont County, Springfield, and Pickaway County during the 1870s and 1880s. None of these lawsuits succeeded.<sup>125</sup> In Cincinnati, a black parent filed suit challenging the exclusion of his child from a nearby white school so his child would not have to walk four miles to a black school. The court rejected the lawsuit, noting that "the only inconvenience complained of is taking a long walk, which walk is not longer than children must take who go to other schools, such as high schools, and less than some must take who go to university."<sup>126</sup>

What is striking about this litigation challenging segregation is the limited usefulness of the Fourteenth Amendment to the United States Constitution to black plaintiffs. During the nineteenth century, only two state trial courts—one in Pennsylvania and one in Kansas<sup>127</sup>—found segregation unlawful based on the Fourteenth Amendment. All other state and federal courts that considered the issue, including at least two in Ohio, found that neither the Privileges or Immunities Clause nor the Equal Protection Clause of the Fourteenth Amendment barred school segregation.<sup>128</sup> These courts held that the privileges or immunities of a

123. Leonard Erickson, *Toledo Desegregates, 1871*, 41 NW. OHIO Q. 5 (1968-1969).

124. Gerber, *supra* note 103, at 8.

125. *State ex rel. Gurnes v. McCann*, 21 Ohio St. 198 (1871) (Ohio Supreme Court rejects challenge to school segregation in Franklin County on both state and federal constitutional grounds); *SAN FRANCISCO PAC. APPEAL*, June 28, 1873, at 2 (state trial court rejects challenge to school segregation in Clermont County); *Ohio ex rel. Lewis v. Bd. of Educ. of Cincinnati*, 1876 Ohio Misc. LEXIS 111 (Ohio Misc. Apr. 1876) (trial court rejects challenge to school segregation in Cincinnati); *United States v. Buntin*, 10 F. 730, 735-36 (S.D. Ohio 1882) (federal court rejects a second challenge to school segregation in Clermont County); *The Gatzert Case*, CLEVELAND GAZETTE, Feb. 16, 1884, at 1 (trial court rejects challenge to school segregation in Springfield); *An Outrageous Decision*, CLEVELAND GAZETTE, June 7, 1884, at 2 (trial court rejects challenge to school segregation in Pickaway County).

126. Erickson, *supra* note 15, at 243; *Ohio ex rel. Lewis*, 1876 Ohio Misc. LEXIS 111, at \*\*3-4. In a subsequent challenge to school segregation in Ohio, a federal district court judge instructed a jury that a black child was entitled to admission to a white district school "if, as has been contended, you shall find that said colored school was so remote from the prosecuting witness' residence that he could not attend it without going an unreasonable and oppressive distance." Though the black student was required to walk five miles to the black school, rather than attend a white school three miles away, the jury did not find such distance to be oppressive and rejected the challenge. *Buntin*, 10 F. at 735.

127. The two courts were a trial court in Crawford County, Pennsylvania, and Ottawa, Kansas, both in 1881. *Allen v. Davis*, 10 WNC 156 (1881); ANDREW KULL, *THE COLOR-BLIND CONSTITUTION* 103-07 (1992).

128. Numerous courts considered but rejected claims that the Fourteenth Amendment barred school segregation. *See, e.g., State ex rel. Gurnes v. McCann*, 21 Ohio St. 198, 209-11 (1871); *Buntin*, 10 F. at 737.

citizen of the United States did not encompass the right to an education, traditionally a matter of state concern, and that a separate but equal education did not violate the Equal Protection Clause.<sup>129</sup>

Faced with limited success petitioning local authorities and filing lawsuits, those northern blacks who favored racially mixed schools sought anti-segregation legislation during the post-Civil War era. These efforts enjoyed considerably more success than did petitions and lawsuits. Between 1864 and 1890, virtually every northern state and a few western states that had previously required or permitted school segregation, and some states that had been silent on the issue, enacted legislation prohibiting school segregation.<sup>130</sup> Ohio, in 1887, repealed its earlier statute that had permitted school segregation.

The enactment of anti-segregation legislation throughout the North did not reflect a broad and enthusiastic embrace of racially mixed schools. Rather, it reflected a combination of Radical Republican support for the abolition of racial distinctions in public education (particularly during the Reconstruction era), the calculated desire of certain legislators to secure the electoral support of black voters, and the unwelcome expense of retaining dual schools. Moreover, no northern state had a substantial black population, making white legislators more inclined to support legislation that would lead to very modest pupil mixing.

In Ohio, the desire of white politicians to capture political support from newly enfranchised black voters played a particularly significant role in desegregation efforts. Black men in Ohio, along with those throughout the nation, were enfranchised following ratification of the Fifteenth Amendment to the United States Constitution in 1870. Although most northern blacks were inclined to support the anti-slavery Republican Party, many prominent northern blacks, such as educator

---

129. See, e.g., *Buntin*, 10 F. at 737 (rejected challenge to school segregation as violation of Equal Protection Clause); *Garnes*, 21 Ohio St. at 209-10 (rejected challenge to school segregation based on Privileges or Immunities Clause and Equal Protection Clause); *Ward v. Flood*, 48 Cal. 36, 49-51 (1874) (rejected challenge to school segregation based on Privileges or Immunities Clause and Equal Protection Clause); *Cory v. Carter*, 48 Ind. 327 (1874) (rejected challenge to school segregation based on Privileges and Immunities Clause and Equal Protection Clause); *People ex rel King v. Gallagher*, 93 N.Y. 438 (1883) (rejected challenge to school segregation based on Privileges or Immunities Clause and Equal Protection Clause).

130. Rhode Island (1866); Michigan (1867, 1871); Connecticut (1868); Minnesota (1869); New York (1873, 1900); Kansas (1873, 1874); Illinois (1874); California (1880); New Jersey (1881); Pennsylvania (1881); Ohio (1887); Washington Territory (1889). Two other western states, Colorado (1876) and Idaho (1889), banned school segregation in their state constitutions. Wyoming went the other direction, enacting legislation in 1887 *permitting* school segregation on local option if there were at least fifteen black children in a school district. Indiana enacted legislation in 1869 permitting school segregation and did not repeal that legislation until 1949. JOHNSON, *supra* note 57, *passim*; GILBERT THOMAS STEPHENSON, *RACE DISTINCTIONS IN AMERICAN LAW* 186-87 (1910).



Peter Clark of Cincinnati, openly questioned the unfaltering allegiance of African Americans to the party of Lincoln, shrewdly recognizing that as long as Republicans took the black vote for granted, they would be less willing to grant legislative and patronage benefits to African Americans. At the same time, closely contested elections during the 1870s and 1880s gave black voters some electoral influence, as did the concentration of blacks in certain urban centers.<sup>131</sup>

During the 1873 election, Ohio Democrats for the first time made a direct appeal for black votes, abandoning an earlier decision to campaign on the evils of racial mixing. For the next several years, Ohio Democrats actively recruited black political support, sponsoring the development of black Democratic clubs and supporting the establishment of a black Democratic newspaper.<sup>132</sup> By the early 1880s, both Democrats and Republicans, anxious to secure black votes, supported a variety of desegregation initiatives in Ohio. Even though blacks comprised less than three percent of the Ohio population during the last three decades of the nineteenth century (the second highest percentage in the North behind New Jersey),<sup>133</sup> in the closely contested elections of the 1870s and 1880s, their vote proved crucial, often providing the margin of victory.<sup>134</sup> As historian Lawrence Grossman has noted of this time period: "the evidence of increased Negro [political] independence, though impressionistic rather than statistically verifiable, cannot be ignored. Politicians at the time took it seriously, Democrats seeing opportunity, Republicans fearing danger."<sup>135</sup>

For example, in the Ohio gubernatorial election of 1883, a contest of two Cincinnati attorneys, the Democrat George Hoadly defeated the Republican Joseph Foraker by 12,529 votes.<sup>136</sup> Hoadly believed that he won the election by capturing a significant portion of the state's 16,000 black votes, many of whom were upset that Foraker had recently defended the Springfield (Ohio) School Board's efforts to keep a black child out of her neighborhood white school.<sup>137</sup> Governor Hoadly took office shortly after the United States Supreme Court in the *Civil Rights Cases*<sup>138</sup> struck down the federal Civil Rights Act of 1875 which prohibited racial discrimination in public accommodations. The

131. David A. Gerber, *A Politics of Limited Options: Northern Black Politics and the Problem of Change and Continuity in Race Relations Historiography*, 14 J. OF SOC. HIST. 235, 236 (1980).

132. GROSSMAN, *supra* note 116, at 80-81.

133. U. S. DEPT OF COMMERCE, *supra* note 110, at 24-37.

134. GERBER, *supra* note 37, at 230-31.

135. GROSSMAN, *supra* note 116, at 105.

136. GERBER, *supra* note 37, at 232.

137. *Id.*; GROSSMAN, *supra* note 116, at 83.

138. 109 U.S. 3 (1883).

Court's decision outraged blacks throughout the North and prompted the establishment of approximately two hundred equal rights organizations in Ohio alone.<sup>139</sup> Democrats used the controversial decision to their political advantage, blaming the Republican Supreme Court for undermining black rights.

Yet the commitment of many Ohio Democrats to civil rights did not go much deeper than the desire to retain black electoral support. In early January 1884, the Ohio legislature began consideration of a bill banning racial discrimination in public accommodations. In fact, state legislatures throughout the North and West enacted legislation during the 1880s banning discrimination in public accommodations in response to the Supreme Court's decision in the *Civil Rights Cases*;<sup>140</sup> the success of this legislation was attributable in significant measure to the desire of northern politicians to capture black political support.<sup>141</sup> Most Democrats in the Ohio legislature opposed the proposed civil rights bill, but were reluctant to voice opposition for fear of antagonizing black voters. When forced to go on record, Democrats supported the legislation, hoping that it would die in committee. Republican legislators, however, kept the anti-discrimination bill alive, although Democrats voted along party lines to block a Republican-sponsored amendment that extended coverage to eating establishments. In early February 1884, the more limited Democratic version of the legislation passed unanimously. After blacks objected to the exclusion of eating establishments, the legislature subsequently voted with only two dissenting Democratic votes in each chamber to include a ban on discrimination in eating establishments.<sup>142</sup>

But the Ohio anti-discrimination law did not reflect widespread support for black civil rights as many legislators voted for the measure to placate black voters but without a deep commitment to equal rights. Significantly, Ohio's civil rights legislation provided for monetary penalties but with no specified minimum, to the dismay of many blacks.<sup>143</sup> In the hands of unsympathetic judges and jurors, the penalties

---

139. Valeria W. Weaver, *The Failure of Civil Rights 1875-1883 and Its Repercussions*, 54 J. OF NEGRO HIST. 368, 374-75 (1969).

140. MILTON R. KONVITZ & THEODORE LESKES, A CENTURY OF CIVIL RIGHTS 157 (1961) (Connecticut - 1884; Iowa - 1884; New Jersey - 1884; Ohio - 1884; Colorado - 1885; Illinois - 1885; Indiana - 1885; Michigan - 1885; Minnesota - 1885; Nebraska - 1885; Rhode Island - 1885; Pennsylvania - 1887).

141. GROSSMAN, *supra* note 116, at 75, 99 ("Democratic state legislators tended to favor civil rights measures in proportion to the number of Negroes residing in their districts.").

142. *Id.* at 85-86.

143. Michael Harlan Washington, *The Black Struggle for Desegregated Quality Education: Cincinnati, Ohio 1954-1974*, at 46 (1984) (unpublished Ed. D. dissertation, University of Cincinnati) (on file with University of Cincinnati Libraries).



tended to be minimal, often little more than "a registration fee for discriminatory practices."<sup>144</sup> For example, two early lawsuits in Ohio alleging racial discrimination in roller skating rinks resulted in damages awards of one cent and fifty cents.<sup>145</sup> These small fines, coupled with the cost of retaining counsel and pursuing litigation, undercut the efficacy of the statutory prohibition.<sup>146</sup>

In addition to enacting a statutory ban on discrimination in public accommodations, Ohio Republicans took action in 1884 to shore up their support among Ohio blacks by introducing legislation to ban school segregation. Black Ohioans had sought such a statutory ban since the early 1870s, but efforts to enact such legislation had repeatedly failed.<sup>147</sup> In 1878, the Ohio State legislature had enacted legislation that provided that local school authorities could establish racially separate schools at their discretion, but if they failed to do so, black children were entitled to attend the common schools along with whites.<sup>148</sup> But the legislature had refused to go further and prohibit the establishment of segregated schools. Governor Hoadly, a strong proponent of anti-segregation legislation, joined the effort to secure its enactment. Hoadly had had a long history of involvement in civil rights issues. A Cincinnati lawyer affiliated with both the Free Soil Party and the Republican Party during the antebellum era, Hoadly had represented those black parents who had sued the Cincinnati school authorities in 1849 to force the release of tax monies to support separate black schools.<sup>149</sup>

School desegregation, however, proved to be a much more difficult issue than the desegregation of public accommodations. The mixing of children aroused white fears of racial amalgamation. Hence, many

144. Weaver, *supra* note 139, at 381.

145. *Id.* at 376.

146. In addition, Ohio's anti-discrimination law, like that in many other states, guaranteed a jury trial. Given the small numbers of blacks serving on northern juries, this right may have contributed to the minimal damages frequently awarded. *Id.* at 369.

Moreover, many courts construed these anti-discrimination statutes very narrowly. The Ohio statute, like that of most northern states, listed various businesses covered by the statutory prohibition as well as any "other place of public accommodation." But many courts refused to extend coverage to any business not specifically mentioned in the statute, rendering superfluous the phrase "other place of public accommodation." Kellar v. Koerber, 55 N.E. 1002, 1003 (Ohio 1899). Other courts denied liability on the basis of a technicality. An Ohio circuit court, for example, reversed a finding that a theater had refused to sell a ticket to a black man concluding that the plaintiff had not proven that the theater had authorized the ticket seller to refuse him a ticket. In so doing, the court sidestepped established principles of agency law. QUILLIN, *supra* note 24, at 118.

147. Erickson, *supra* note 15, at 339-53. In 1871, fifty-one of fifty-seven Republicans in the Ohio State legislature supported anti-segregation legislation, but the measure failed because of Democratic opposition. Montgomery, *supra* note 32, at 61.

148. Ohio *ex rel.* Gibson v. Bd. of Educ., 2 Ohio C.C. 557, 560 (1887); Erickson, *supra* note 15, at 202.

149. See *supra* text accompanying notes 95-96; GERBER, *supra* note 37, at 233.

Ohio legislators, particularly Democrats from the state's racially conservative southern counties, drew the line with school desegregation and narrowly defeated the proposed anti-segregation legislation in both 1884 and 1885.<sup>150</sup> One House Democrat from Cincinnati attempted to persuade his colleagues to support the anti-segregation legislation in 1885, arguing that if they opposed it, they would lose crucial black support that might cost them the 1885 election.<sup>151</sup> Though his efforts secured enough Democratic votes to gain passage in the House, the measure failed in the Senate.<sup>152</sup>

Competition for the black vote during the 1885 Ohio gubernatorial election was particularly fierce. Although Democratic incumbent Hoadly sought black support based upon the enactment of the state civil rights legislation in 1884, the Republican Supreme Court's adverse decision in the *Civil Rights Cases* in 1883, and his extensive granting of patronage to black office seekers, the Republicans countered by pointing to the oppression of southern blacks by the Democratic Party.<sup>153</sup> The Republican candidate, Foraker, won the closely contested election. Commenting on the importance of the black vote to his success, Foraker later noted that "[t]he Negro vote was so large that it was not only an important but an essential factor in our consideration. It would not be possible for the Republican party to carry the state if that vote should be arrayed against us."<sup>154</sup> Accordingly, in his inaugural address, Governor Foraker urged an end to the harsh Black Laws—including the law mandating school segregation.<sup>155</sup> A black Republican legislator from Cleveland, Jere Brown, explained the importance of the repeal legislation to Ohio's black community. "Defeat this bill," he counseled his legislative colleagues, "and the wrath of the colored voters will bury you beneath their ballots."<sup>156</sup> Such sentiment seemed ungrounded given that only one in forty Ohioans was black. The razor-thin electoral margins in Ohio's state elections during the 1880s, however, gave the black vote particular importance.

In early 1887, the long struggle against school segregation came to fruition as the Ohio legislature, with broad Republican and some Democratic support, repealed the earlier legislation that had permitted

---

150. GROSSMAN, *supra* note 116, at 87-88; Mason, *supra* note 108, at 18-20; Washington, *supra* note 143, at 45-47.

151. Montgomery, *supra* note 32, at 74.

152. GERBER, *supra* note 37, at 240.

153. GROSSMAN, *supra* note 116, at 89-91.

154. WENDELL P. DABNEY, CINCINNATI'S COLORED CITIZENS: HISTORICAL, SOCIOLOGICAL AND BIOGRAPHICAL 84 (1926).

155. GROSSMAN, *supra* note 116, at 91-92.

156. *Id.* at 92.



segregated schools and prohibited miscegenation.<sup>157</sup> Concern for black votes was undeniably a critical factor in the enactment of this legislation. But for some legislators, the cost of dual schools played a role as well. Several Ohio communities, including Columbus and Dayton, had already integrated their schools during the early 1880s in part because of the cost of dual schools.<sup>158</sup> When the Ohio state legislature considered anti-segregation legislation in the 1880s, some Ohio legislators argued in favor of such a move because of the financial burden of operating a dual school system.<sup>159</sup> Earlier, in 1863, when the Ohio General Assembly reenacted legislation requiring school systems to provide separate black schools when there were a certain number of black children in the district, many Clevelanders had complained of the economic burden of establishing separate black schools. The *Cleveland Leader*, for example, argued that "[t]o establish separate schools for colored children will be to entail upon taxpayers the additional expense of new school buildings and new teachers."<sup>160</sup>

### III. ENFORCEMENT OF OHIO'S ANTI-SEGREGATION LEGISLATION

In the wake of the enactment of anti-segregation legislation in Ohio, many school districts abolished their segregated schools.<sup>161</sup> Many others, however, particularly in the southern counties of the state where segregationist sentiment was strongest and black enrollments were frequently the largest, took evasive actions.<sup>162</sup> A few communities, such as Chillicothe and Xenia, utilized racially gerrymandered attendance zones to preserve racial separation.<sup>163</sup> Other Ohio communities opened

157. Erickson, *supra* note 15, at 350; John Roy Squibb, *Roads to Plessy: Blacks and the Law in the Old Northwest: 1860-1896*, at 173-75 (1992) (unpublished Ph.D. dissertation, University of Wisconsin) (on file with University of Wisconsin Libraries); MCGINNIS, *supra* note 120, at 30-34, 57-63.

158. Gerber, *supra* note 103, at 8.

159. Squibb, *supra* note 157, at 179; Kessen, *supra* note 14, at 134; GERBER, *supra* note 37, at 195.

160. Thomas J. Goliber, *Cuyahoga Blacks: A Social and Demographic Study, 1850-1880*, at 125 (1972) (unpublished M.A. Thesis, Kent State University) (on file with Kent State University Libraries).

161. Following the legislative repeal of the school segregation statute, schools in Bellefontaine, Circleville, Crestline, Dayton, Findlay, Marietta, Marion, Piqua, Rendville, Springfield, Steubenville, Troy, and Wooster were integrated. Squibb, *supra* note 157, at 173, 179; MCGINNIS, *supra* note 120, at 47. Moreover, the legislation strengthened recently integrated schools in Athens, Lancaster, Mt. Vernon, Marysville, and Upper Sandusky. Squibb, *supra* note 157, at 179.

162. These recalcitrant communities included Avondale, Bainbridge, Chillicothe, Gallipolis, Hillsboro, Lockland, New Richmond, Oxford, Wilmington, Xenia, and Yellow Springs. GERBER, *supra* note 37, at 266; QUILLIN, *supra* note 24, at 94, n.11, 95; Fishel, *supra* note 26, at 323-24; Squibb, *supra* note 157, at 180.

163. GERBER, *supra* note 37, at 265-66 (Chillicothe); QUILLIN, *supra* note 24, at 96 (Xenia); GEORGE F. DAVID, *WILBERFORCE UNIVERSITY, SOCIAL EFFECT OF SCHOOL SEGREGATION IN XENIA, OHIO 14-15, 23-24* (1939) (Xenia).

a few white schools to black students but retained black schools as well.<sup>164</sup> An early twentieth-century study of Ohio race relations aptly noted that "legal provisions intended to establish racial equality are either observed or ignored according as the white element in the several communities may determine."<sup>165</sup>

Cincinnati, home to the state's largest black population, kept its separate black schools open for attendance on a voluntary basis, and continued to use black teachers in those schools. In fact, in 1889 and 1890, the state legislature considered, but eventually rejected, legislation that would have expressly permitted the continuation of racially separate schools in localities that chose to do so.<sup>166</sup> In some instances, white children in Cincinnati transferred to different schools when black children enrolled in their school.<sup>167</sup> During the first few years after enactment of the anti-segregation legislation, the Cincinnati school superintendent recommended closing the city's only black high school, but retaining several of the black grade schools.<sup>168</sup> Over time, however, the school board closed most of the separate black schools such that by the early twentieth century, only one of the city's separate black schools—the newly renamed Frederick Douglass school—remained.<sup>169</sup>

One factor that complicated both black demands for school desegregation and enforcement of anti-segregation legislation was the fact that some blacks favored racially separate public schools. In fact, blacks in Ohio were sharply divided on the importance of racially mixed schools during the last three decades of the nineteenth century. In some Ohio communities, including Cincinnati, many blacks opposed enactment of the anti-segregation legislation and pressed for the retention of separate black schools or petitioned for the establishment of new black schools after the enactment of the anti-segregation legislation.<sup>170</sup> In fact, beginning in 1878, each legislative consideration

---

164. Squibb, *supra* note 157, at 180.

165. QUILLIN, *supra* note 24, at 125.

166. Montgomery, *supra* note 32, at 81-82.

167. *Id.* at 79-80. Moreover, the College Hill school district, which was later annexed to the Cincinnati City school district, refused to let black children attend a white school, a decision eventually reversed by the Ohio Supreme Court in 1888. *Bd. of Educ. v. Ohio ex rel. Hunter*, 16 N.E. 373 (Ohio 1888); Montgomery, *supra* note 32, at 76.

168. *The Negro in Cincinnati Public Schools 2-4* (1966) (unpublished document on file with William and Mary Law Library); Washington, *supra* note 143, at 50, 54; Erickson, *supra* note 15, at 248; Montgomery, *supra* note 32, at 83. The closure of Gaines High School, which had been established in 1866, was viewed by many blacks as a real loss. Gaines had been an important training ground for black teachers who worked throughout the country. Robisch, *supra* note 20, at 52-54.

169. Washington, *supra* note 143, at 55. That Cincinnati's separate black school would bear the name of Frederick Douglass bore a certain irony. Douglass, during his lifetime, had been a strong opponent of school segregation. See text accompanying *supra* note 121.

170. Montgomery, *supra* note 32, at 79 (describing black support for retention of separate schools in



of anti-segregation legislation provoked disagreement within the Ohio black community.<sup>171</sup>

Many blacks feared mistreatment of their children in racially mixed schools at the hands of white teachers and classmates. For example, in some racially mixed schools, white teachers punished white children by making them sit next to black children.<sup>172</sup> In 1897, 700 Cincinnati blacks signed a petition complaining of the mistreatment of their children in the city's racially mixed schools.<sup>173</sup> In fact, the mistreatment was so severe that by 1901, after most of the separate black schools were closed, only about half of the school-age black children in Cincinnati still attended the public schools.<sup>174</sup>

Some blacks worried about how their children, who, because of family poverty were ill-dressed, would fit in with white children. One Cincinnati black teacher explained:

Colored people, as a rule, are poor, and their children are not as well clad as the white children with whom they would be compelled to associate in mixed schools and the colored children will feel that they are not wanted. These things will seriously embarrass colored children—in fact, many will absent themselves entirely.<sup>175</sup>

A pro-segregation black in Dayton characterized the struggle to preserve segregated schools as “our battle for the education, health and happiness of our little colored children, more than half of whom cannot afford to dress in the White folks’ fashions or be prompt and regular in attendance at the White folks’ schools.”<sup>176</sup>

Many African Americans favored separate schools in order to ensure that their children were taught by black teachers, believing that their children would be better educated under the tutelage of a black teacher. A few Ohio cities—Cleveland, Columbus, and Youngstown—allowed black teachers to teach in racially mixed schools following enactment of the 1887 anti-segregation legislation, but these were exceptions and involved only a few teachers; moreover, within a few decades, only Cleveland still allowed black teachers to teach white children.<sup>177</sup> In

---

Cincinnati following enactment of anti-segregation legislation).

171. *Id.* at 69.

172. *Outrage!*, CLEVELAND GAZETTE, Oct. 3, 1885.

173. *School Board Reappoints Superintendent Morgan*, CINCINNATI ENQUIRER, May 11, 1897, at 6; *Stormy Meeting of School Board Occasioned by a Petition from Colored People*, CINCINNATI ENQUIRER, Apr. 27, 1897, at 5; Washington, *supra* note 143, at 52-53.

174. Washington, *supra* note 143, at 54.

175. *Mixed Schools*, CLEVELAND GAZETTE, Feb. 14, 1885, at 2.

176. Gerber, *supra* note 103, at 28 n.40.

177. GERBER, *supra* note 37, at 265; Fishel, *supra* note 26, at 343-44.

most of Ohio, including Cincinnati, integration denied black children access to black teachers.<sup>178</sup>

Besides the greater nurture and care that black teachers provided black children in comparison to white teachers, many African Americans recognized the important role that black teachers played in the social and political fabric of the black community and feared that the loss of black teachers would strip the community of many of its natural leaders. Teaching was one of the few professions open to blacks in the nineteenth-century North and it attracted some of the most educated members of the community. Black teachers provided leadership for the black community and played important roles in a variety of voluntary associations.<sup>179</sup> One black teacher offered this assessment of the anti-segregation legislation: "I know of no better scheme to reduce the most intelligent classes of colored people to penury and want, or to drive them from the state to become the victims of southern cruelty and barbarism."<sup>180</sup> Cincinnati's Peter Clark also emphasized that the salaries earned by black teachers helped support black families, businesses, and institutions.<sup>181</sup>

Not surprisingly, many black teachers were firm opponents of school desegregation because of fears of job loss. Black teachers in Ohio mounted a fierce campaign in opposition to the anti-segregation campaign of the 1880s. Their opposition helped kill the proposed legislation until its eventual enactment in 1887.<sup>182</sup> Black teachers from Cincinnati, home to the state's largest black population, were particularly strong in their opposition to anti-segregation legislation, favoring instead legislation that allowed the retention of segregated schools upon petition of a majority of blacks in a given school district.<sup>183</sup> After passage of the 1887 legislation, many black teachers in Cincinnati petitioned for the retention of black schools.<sup>184</sup> One Ohio black teacher explained: "To mix the schools will be virtually dismissing all the colored teachers from the profession. We have many teachers who have

178. JUDY JOLLEY MOHRAZ, *THE SEPARATE PROBLEM: CASE STUDIES OF BLACK EDUCATION IN THE NORTH, 1900-1930*, at 87 (1979); GROSSMAN, *supra* note 116, at 87; Fishel, *supra* note 26, at 319.

179. TYACK, *supra* note 11, at 118.

180. Gerber, *supra* note 103, at 11; see GROSSMAN, *supra* note 116, at 87.

181. Montgomery, *supra* note 32, at 72.

182. *The School Question*, CLEVELAND GAZETTE, Feb. 14, 1885, at 2; *Colored Teachers Try to Keep Separate Schools*, CLEVELAND GAZETTE, Feb. 2, 1885, at 2; *Mixed Schools*, CLEVELAND GAZETTE, Feb. 16, 1884, at 2; Kessen, *supra* note 14, at 133; GERBER, *supra* note 37, at 200-01; Washington, *supra* note 143, at 29-30, 47; GROSSMAN, *supra* note 116, at 88.

183. Gerber, *supra* note 103, at 19; Washington, *supra* note 143, at 46. For example, Peter Clark, a black teacher in Cincinnati, was a particularly outspoken opponent of anti-segregation legislation. *Mixed Schools*, CLEVELAND GAZETTE, Feb. 16, 1884, at 2.

184. Corr, *supra* note 21, at 5.



labored hard to make themselves proficient in the art of teaching. To repeal [the segregation law] will bring upon them an unjust hardship."<sup>185</sup> Ohio Governor Hoadly, who supported anti-segregation legislation, conceded in 1885 during the debate over anti-segregation legislation that the elimination of segregated schools "would result in the dismissal of some [black] teachers."<sup>186</sup>

Some African Americans bitterly attacked those black teachers who favored segregated schools, accusing them of being more interested in their own job security than the education and advancement of black children.<sup>187</sup> But fears of black teacher loss were real. Following the enactment of anti-segregation legislation in Ohio in 1887, hundreds of black teachers lost their jobs and left the state to pursue teaching opportunities in segregated school systems in the South.<sup>188</sup> In Springfield, Ohio, school authorities discharged *every* black teacher after enactment of the 1887 anti-segregation legislation.<sup>189</sup> As one Ohio school superintendent explained: "Negroes gave up their teachers when they gave up separate schools."<sup>190</sup> When black teachers in some Ohio communities lobbied to keep their jobs, school officials indicated that jobs would be saved only through the restoration of segregated schools.<sup>191</sup>

In Cincinnati, School Superintendent E.E. White announced after enactment of the 1887 anti-segregation legislation that he could not "see how the school board can employ the teachers in the Colored Schools after their present contracts have expired."<sup>192</sup> In fact, the 1889 Cincinnati school report provided that if enrollment in the city's black schools declined—which it did—then black teachers would be dis-

185. *Mixed Schools*, CLEVELAND GAZETTE, Feb. 14, 1885, at 2.

186. GROSSMAN, *supra* note 116, at 88.

187. The *Cleveland Gazette*, a black newspaper edited by Harry Smith, was a consistent and strong voice against school segregation and castigated those in the black community, including black teachers, who favored the retention of segregated schools. The *Gazette* labeled such blacks "a nuisance to the community in which they live" and claimed that "Negroes who oppose mixed schools . . . should be treated as enemies to their race." *Mixed Schools*, CLEVELAND GAZETTE, January 12, 1889, at 2; *see also The School Question*, CLEVELAND GAZETTE, Sept. 22, 1883, at 2; *Springfield*, CLEVELAND GAZETTE, Mar. 22, 1884, at 1; *The Democrats Sanction the Black Lines*, CLEVELAND GAZETTE, Apr. 12, 1884, at 2; *Mixed Schools*, CLEVELAND GAZETTE, Feb. 14, 1885, at 2.

188. Squibb, *supra* note 157, at 195.

189. AUGUST MEIER & ELLIOTT RUDWICK, *ALONG THE COLOR LINE: EXPLORATIONS IN THE BLACK EXPERIENCE* 291 (1976).

190. Squibb, *supra* note 157, at 195.

191. Washington, *supra* note 143, at 50.

192. CINCINNATI ENQUIRER, Feb. 28, 1887, at 4.

charged.<sup>193</sup> In 1896, a subsequent Cincinnati school superintendent announced that he would appoint no black teachers during his tenure.<sup>194</sup>

But many Ohio blacks supported the 1887 anti-segregation legislation and filed lawsuits when local school authorities refused to comply with its mandate. In the fall of 1887, the school authorities in Oxford, Ohio, resolved to exclude all black children from the town's white schools, notwithstanding the anti-segregation legislation. In 1888, the Ohio Supreme Court upheld a challenge to school segregation in Oxford, Ohio, and concluded that the anti-segregation legislation prohibited the continued operation of racially segregated schools.<sup>195</sup> That decision laid to rest any notion that the 1887 legislation, which had repealed earlier legislation permitting school segregation, did not actually prohibit a local school board from choosing to retain racially separate schools. Other successful lawsuits seeking to enforce anti-segregation legislation followed.<sup>196</sup>

Yet despite these legislative and litigation victories, school segregation nevertheless persisted in parts of Ohio as some recalcitrant school boards found ways of avoiding compliance with adverse court decisions, leaving segregated schools intact. For example, after litigation forced the integration of the Xenia schools, the local school board racially gerrymandered the school district to preserve racially separate schools.<sup>197</sup> The school boards in New Richmond and Felicity, Ohio, simply closed schools following a court decision requiring desegregation.<sup>198</sup> Both New Richmond and Felicity also used racially segregated classrooms to evade court-ordered desegregation.<sup>199</sup>

In a few Ohio communities, blacks who insisted on school integration faced retaliation or even violence. Some whites used economic pressure—terminations at work or refusal to renew leases—to discourage desegregation efforts.<sup>200</sup> For example, in Oxford, Ohio, a

---

193. Washington, *supra* note 143, at 51.

194. *Id.*

195. Bd. of Educ. v. State *ex rel.* Gibson, 16 N.E. 373 (Ohio 1888).

196. *School Board Case*, CLEVELAND GAZETTE, December 17, 1887, at 2 (Xenia); *Another Victory for Equal Rights*, CLEVELAND GAZETTE, Dec. 24, 1887, at 2 (Yellow Springs); *Mixed Schools*, CLEVELAND GAZETTE, Apr. 6, 1889, at 2 (New Richmond); CLEVELAND GAZETTE, May 11, 1889 (Felicity); *In re Bd. of Educ. at Zanesville*, 1895 WL 1458 (Ohio Com. Pl. 1895) (Zanesville).

197. QUILLIN, *supra* note 24, at 96-97; David, *supra* note 163, at 14-15.

198. Squibb, *supra* note 157, at 182-83.

199. *Id.*

200. Whites in some areas used economic pressure to force blacks out of the community and hence out of the public schools. *Id.* at 183-84. Some Ohio communities prevented black families from settling within their borders. Hannibal G. Duncan, *The Changing Race Relationship in the Border and Northern States* 33 (1922) (unpublished Ph.D. dissertation, University of Pennsylvania) (on file with University of Pennsylvania Libraries).



white merchant fired all of his black employees when a black parent filed a lawsuit to end school segregation.<sup>201</sup> Some white landowners in Ohio refused to renew leases to black tenants in the wake of the enactment of anti-segregation legislation, forcing black families to abandon communities in danger of school integration.<sup>202</sup> In several communities in Ohio—Felicity, New Richmond, and Ripley—violence accompanied efforts to integrate schools during the late nineteenth century.<sup>203</sup> A contemporary news report described the white reaction to black efforts to desegregate the Felicity schools: “The white people . . . kept colored children out of the schools by force, and beat and maltreated the colored parents, destroying their property in some cases, and established a boycott against all colored people, to drive them out.”<sup>204</sup>

#### IV. INCREASE IN SCHOOL SEGREGATION IN OHIO, 1900-1940

White insistence on racial separation in northern schools increased in response to the northern migration of southern blacks that began during the last decade of the nineteenth century and that exploded during and after World War I. This influx of southern blacks exacerbated racial tensions and many white school officials who had tolerated school integration when the number of blacks was relatively small began to insist on racial separation. By the 1930s, school segregation in Ohio, including Cincinnati, was more extensive than it had been at the turn of the century.

Migration northward began in significant numbers during the 1890s. Whereas only 88,000 blacks left the South during the 1880s, 185,000 departed during the 1890s, and 194,000 during the first decade of the twentieth century. Between 1890 and 1910, about 2.5 percent of the South's black population moved North.<sup>205</sup> Of the three northern states with the largest black population in 1910—Pennsylvania (191,000), New York (120,000), Ohio (110,000)—each experienced an increase in black

---

201. RAYFORD W. LOGAN, *THE NEGRO IN AMERICAN LIFE AND THOUGHT: THE NADIR 1877-1901*, at 235 (1954).

202. QUILLIN, *supra* note 24, at 94.

203. *The White Caps Warn Us*, CLEVELAND GAZETTE, Jan. 12, 1889, at 2; CLEVELAND GAZETTE, Dec. 8, 1888, at 2; GERBER, *supra* note 37, at 264; QUILLIN, *supra* note 24, at 94-95; MEYER WEINBERG, *A CHANCE TO LEARN: THE HISTORY OF RACE AND EDUCATION IN THE UNITED STATES* 68 (1977); Fishel, *supra* note 26, at 217-19.

204. QUILLIN, *supra* note 24, at 94-95.

205. STEVEN J. DINER, *A VERY DIFFERENT AGE: AMERICANS OF THE PROGRESSIVE ERA* 131 (1998).

population between 1900 and 1910 of over twenty-five percent.<sup>206</sup> In 1903, W.E.B. Du Bois noted that "the most significant economic change among Negroes in the last ten or twenty years has been their influx into northern cities."<sup>207</sup> Many blacks migrated to Cincinnati. Between 1890 and 1910, the city's black population increased by seventy-four percent, compared to a twenty-one percent increase in the city's white population.<sup>208</sup>

Given the correlation between the enfranchisement of northern blacks and the increase in influence that African Americans enjoyed in much of the North during the 1870s and 1880s, one might have expected this increase in black population during the 1890s and early twentieth century to have positively affected the status of northern blacks. With a few exceptions, however, the status of northern blacks declined with the onset of the migration of southern blacks into northern cities. The special conditions of the 1870s and 1880s—Radical Republican commitments to racial equality, closely contested elections, and the paucity of black residents in much of the North—had faded by the early twentieth century. The growth of the northern city, populated by native whites and blacks alongside growing numbers of immigrant whites and southern migrant blacks, produced an array of tensions out of which the status of African Americans suffered.

During the first World War, hundreds of thousands of additional southern blacks moved North, launching what would become, over the course of the next four decades, the most significant internal migration in American history.<sup>209</sup> During the 1910s, almost half a million blacks

---

206. BUREAU OF EDUCATION, DEP'T OF INTERIOR, 2 NEGRO EDUCATION: A STUDY OF THE PRIVATE AND HIGHER SCHOOLS FOR COLORED PEOPLE IN THE UNITED STATES 677-89 (1917).

207. AUGUST MEIER & ELLIOTT RUDWICK, FROM PLANTATION TO GHETTO 215 (1966).

208. Jennie D. Porter, *The Problem of Negro Education in Northern and Border Cities* 27 (1928) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with University of Cincinnati Libraries).

209. Several factors contributed to this Great Migration of southern blacks to northern cities during and after World War I. Economic concerns were highly significant. First of all, sharp declines in southern agriculture due to the devastations of the boll weevil—that "ashy-colored rascal," a reduction in cotton prices in 1913 and 1914, and the floods of 1915 and 1916 forced southern blacks to look elsewhere for work. KIMBERLEY L. PHILLIPS, *ALABAMA NORTH: AFRICAN-AMERICAN MIGRANTS, COMMUNITY, AND WORKING-CLASS ACTIVISM IN CLEVELAND, 1915-45*, at 43 (1999); Lisa Yvette Waller, *Holding Back the Dawn: Milton A. Galamison and the Fight for School Integration in New York City, A Northern Civil Rights Struggle, 1948-1968*, at 127 (1998) (unpublished Ph.D. dissertation, Duke University) (on file with Duke University Libraries). These economic problems were coupled with the lure of employment opportunities in the North created by sharp declines in foreign immigration, the labor needs of wartime industry, and the demand for American soldiers to fight in Europe. Immigration declines were particularly dramatic. Whereas 1.2 million immigrants entered the United States in 1914, only 110 thousand arrived in 1918. ALLAN H. SPEAR, *BLACK CHICAGO: THE MAKING OF A NEGRO GHETTO, 1890-1920*, at 131 (1967).



left the South. Another 750,000 migrated northward during the 1920s.<sup>210</sup>

Those states receiving the largest number of black migrants during World War I were, in order, Pennsylvania, Illinois, and Ohio.<sup>211</sup> Most migrants settled in cities. Indeed, by 1920, almost forty percent of the northern black population resided in just eight cities: New York, Philadelphia, Chicago, Detroit, Pittsburgh, Cleveland, Cincinnati, and Columbus.<sup>212</sup> Each of these cities experienced dramatic increases in black population as a result of the migration. Cincinnati's black population increased by fifty-three percent between 1910 and 1920, compared to an eight percent increase in the city's white population.<sup>213</sup>

The black migration during the first three decades of the twentieth century dramatically increased racial tensions in the North and accelerated racial separation that had already begun during the prior quarter century. White demands for segregation in public accommodations, employment, housing, and education sharply increased during the 1920s. As Harvard Sitkoff has written about the Great Migration: "Many who followed the North Star looking for the Promised Land found hell instead: educational and residential segregation, dilapidated housing milked by white slumlords, discrimination by labor unions and employers, brutality by white policemen, and liquor and narcotics the only means of escape."<sup>214</sup>

Public accommodations discrimination sharply increased as many restaurants, hotels, stores, and theaters employed a variety of tactics to discourage black patronage. Sociologist James Hathaway Robinson's wartime survey of black Cincinnati found that "[n]ot only do hotels, restaurants, and soda fountains refuse to serve him . . . but moving picture houses and private parks refuse to admit him; theaters segregate and often embarrass him."<sup>215</sup> A study of black Ohio published in 1913 found extensive segregation in Cincinnati:

210. DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY 1930-1970*, at 80 (1982). Between 1910 and 1940, more than 1.5 million blacks migrated out of the South into northern and western states. *Id.*

211. *Id.* at 80.

212. Gerard Joseph Mosey, *Testing, Tracking, and Curriculum: The Isolation of Black Students in the Buffalo Public Schools from 1917 to 1956*, at 13 (1998) (unpublished Ed.D. dissertation, University of New York at Buffalo) (on file with University of New York at Buffalo Libraries); Darlene Clark Hine, *Black Migration to the Urban Midwest: The Gender Dimension, 1915-1945*, in *THE NEW AFRICAN AMERICAN URBAN HISTORY* 242, 242 (Kenneth W. Goings & Raymond A. Mohl eds., 1996).

213. Porter, *supra* note 208, at 27.

214. HARVARD SITKOFF, *THE STRUGGLE FOR BLACK EQUALITY 1954-1980*, at 8 (1981).

215. JOE WILLIAM TROTTER, JR., *RIVER JORDAN: AFRICAN AMERICAN URBAN LIFE IN THE OHIO VALLEY* 104 (1998).

All the popular parks, such as Chester, The Lagoon and Coney Island, exclude the negroes. Some of them have one "nigger day" each year, when the colored people are allowed to pass the gates which are forbidden them the rest of the year. . . . Hotels, restaurants, eating and drinking places, almost universally are closed to all people in whom any negro strain can be detected. . . . The Bartenders' Union has passed a resolution forbidding its members to wait on colored persons, and they obey the prohibition. . . . The Pullman company refuses to sell berths to colored people going South. . . . The Y.M.C.A. refuses them either active or associate membership.<sup>216</sup>

Employer and labor union discrimination against black workers also increased in the wake of the Great Migration, particularly in skilled labor positions. White workers opposed hiring black workers and employers readily relented to this opposition. The same 1913 study of black Ohio found extensive employment discrimination in Cincinnati:

The colored man in earning his living is hampered on every side by race prejudice. The labor unions as a whole do not want him and will not have him, and their members will not work by his side. The result of this is that he is practically debarred from all mechanical pursuits requiring skill. . . . The white man cannot employ them in any skilled work, if he has so large an undertaking that he has to employ white men with them. The white men will not work with negroes.<sup>217</sup>

A survey by the Cincinnati Chamber of Commerce between 1925 and 1930 found that the most frequent reason employers gave for their failure to hire black workers was employers being "unable or unwilling to mix white and Negro workers."<sup>218</sup>

One of the most striking effects of the Great Migration was a significant increase in northern urban residential segregation.<sup>219</sup> Residential segregation sharply increased in Cincinnati during the first few decades of the twentieth century as a result of racially restrictive covenants, discriminatory real estate practices, zoning regulations, and neighborhood associations.<sup>220</sup> Cincinnati's local real estate agents

---

216. QUILLIN, *supra* note 24, at 127-28.

217. *Id.* at 130.

218. TROTTER, *supra* note 215, at 101-02.

219. MEIER & RUDWICK, *supra* note 207, at 191.

220. JOE WILLIAM TROTTER, JR., *BLACK MILWAUKEE: THE MAKING OF AN INDUSTRIAL PROLETARIAT, 1915-1945*, at 233 (1985). The use of these covenants would persist until the middle of the twentieth century. In 1952, a member of the Cincinnati City Council objected to the expenditure of public funds to provide sewer and water connections and sidewalks for the Shawanoe Trail subdivision in Cincinnati which had been recently developed by Charles Taft, a former city council member, with deed restrictions limiting ownership or occupancy to persons "of the Caucasian Race." *Restriction is Hit By Locker*, CINCINNATI ENQUIRER, Apr. 3, 1952, at 5.



steered black families away from white neighborhoods. During the 1920s, the Cincinnati real estate board instructed its employees that "no agent shall rent or sell property to colored people in an established white section or neighborhood and this inhibition shall be particularly applicable to the hill tops and suburban property."<sup>221</sup> Between 1900 and 1930, Cincinnati's West End emerged as the largest black neighborhood in the city; during those three decades, the black population increased from 3,608 to 29,332. By 1930, sixty percent of the city's African Americans lived in the West End.<sup>222</sup> This increase in residential segregation would have a dramatic effect on subsequent efforts to engage in racial mixing in Cincinnati's public schools.

In fact, a significant consequence of the Great Migration was a sharp increase in northern school segregation. As Kelly Miller of Howard University noted in 1929: "The issue of separate schooling is moving Northward with the rising tide of Negro migration. The color line in education is vigorously asserting itself across the continent."<sup>223</sup> Much of this increase in segregation took place in the southern portions of those states bordering the South—in particular New Jersey, Ohio, Indiana, and Illinois. Ohio, which received the third largest number of black migrants during World War I, experienced a sharp increase in school segregation, even in communities that had eliminated segregated schools during the nineteenth century. Although the Cincinnati School Board had eliminated most of its separate black schools by the early twentieth century, it established several "non-districted" black schools during the first three decades of the twentieth century that it excluded from the city's geographic assignment plan. Even in residentially integrated areas of the city, the school board maintained separate white and "colored" schools. The Cincinnati School Board would continue to exclude several black schools, designated "Separate Colored Schools," from the city's general geographic assignment plan until the eve of the Supreme Court's 1954 *Brown* decision.<sup>224</sup> Although attendance at these separate schools was technically voluntary, the severe harassment that many black children experienced in the city's racially mixed schools left many with the impression that they were unwelcome to learn with white children.<sup>225</sup> The Ohio legislature rejected proposed legislation in 1911

---

221. TROTTER, *supra* note 215, at 106.

222. Washington, *supra* note 143, at 12. This residential segregation had begun during the nineteenth century. By 1880, blacks were no longer living in all wards of the city as they had in 1850; instead, they were increasingly confined to the "basin" along with poor whites. *Id.* at 30.

223. Kelly Miller, *Is the Color Line Crumbling?*, 7 OPPORTUNITY 284, 284 (1929).

224. Washington, *supra* note 143, at 83, 101, 103.

225. Washington, *supra* note 143, at 16. Moreover, on at least one occasion, whites protested the attendance of black children at a racially mixed Cincinnati school. Robisch, *supra* note 20, at 84-85.

to legitimate school segregation, but separate schooling would nevertheless increase throughout the state.<sup>226</sup>

There were many reasons for the movement towards increased school segregation. Central to white support for segregation was the influx of southern black children into northern school districts. Indeed, white insistence on school segregation was generally strongest in those cities that received the largest number of southern migrants and generally increased in proportion to the number of black children in the school district.<sup>227</sup> Many white principals, teachers, and school boards justified school segregation on the grounds that the newly arrived southern migrant children were not equipped to engage in studies alongside white children because of their poor educational backgrounds.<sup>228</sup> In the South, black children had typically attended school for only a few months a year and the quality of that education was vastly inferior to that available in most northern schools. The poor educational background of many southern black children was exacerbated by the fact that many were obliged to assist in the economic support of the family upon arriving in the North.<sup>229</sup>

As a result of their educational deficiencies, many black children were placed in classrooms in which they were considerably older than their peers. Black sociologist Charles Johnson reported in 1932 that when southern black children "come into northern schools . . . the usual problems of overage children develop. Truancy, delinquency and incorrigibility are expressions of this and require special and concerted efforts to correct."<sup>230</sup> These age gaps, coupled with cultural differences, produced socialization problems that adversely affected the attitudes of white school administrators towards the migrant children.<sup>231</sup>

Under the best of circumstances, the assimilation of poorly educated southern black school children into northern schools would have required patience and care from teachers, most of whom were white.

226. Montgomery, *supra* note 32, at 95.

227. FLORETTE HENRI, *BLACK MIGRATION: MOVEMENT NORTH, 1900-1920*, at 182 (1975); LOUISE VENABLE KENNEDY, *THE NEGRO PEASANT TURNS CITYWARD: EFFECTS OF RECENT MIGRATIONS TO NORTHERN CENTERS* 193 (AMS Press 1968).

228. KENNEDY, *supra* note 227, at 196-98; SPEAR, *supra* note 209, at 204; T.J. WOOFER, JR., *NEGRO PROBLEMS IN CITIES* 175-76 (1928); CHICAGO COMMISSION ON RACE RELATIONS, *THE NEGRO IN CHICAGO: A STUDY OF RACE RELATIONS AND A RACE RIOT* 239, 256, 258 (1922); *The Segregation of Negro Children at Toms River, N.J.*, 25 SCH. & SOC'Y 365 (Mar. 26, 1927).

229. E. George Payne, *Negroes in the Public Elementary Schools of the North*, 140 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 224, 231-32 (1928).

230. C.S. Johnson, *The Need of Social Work in Cities—in the North*, 4 (Jan. 30, 1932) (unpublished manuscript on file with Charles Johnson Papers, Box 166, Folder 16, Fisk University Library, Nashville, Tenn.).

231. Mosey, *supra* note 212, at 64.



But many white teachers were neither prepared nor willing to assist these black students make the necessary adjustment into their new school, and the limited academic preparation of these new arrivals gave way to racist stereotypes about the deficiencies of African Americans.<sup>232</sup> Many white educators openly urged school segregation, notwithstanding state anti-segregation laws that prohibited such action.<sup>233</sup> Louis Pechstein, Dean of the University of Cincinnati School of Education and a prominent northern white educator, wrote in 1929:

While all would prefer to have democracy in education, this goal has not been reached and is not likely to be reached in the northern cities studied, since the separation of the races in all walks of life is operating and seems likely to continue. . . . The ideal separate public school for negroes in northern cities will, under a staff of well-trained negro teachers, function in providing a closer parent-pupil-teacher relation as well as a clearer insight into the treatment of mental deficiency, social maladjustments, special disabilities, and irregularities in behavior.<sup>234</sup>

Moreover, the Ku Klux Klan experienced a striking resurgence throughout much of the North and West during the 1920s, including Ohio. The Klan urged both school segregation and a ban on interracial marriage.<sup>235</sup>

In the face of increasing white insistence on school segregation during the first four decades of the twentieth century, the northern black community divided over the appropriate response. In the face of the harsh treatment of black children in racially mixed schools that had begun after the desegregation of the city's schools during the late nineteenth century, and the exclusion of black teachers from racially

232. E. FRANKLIN FRAZIER, *THE NEGRO IN THE UNITED STATES* 440-41 (1949).

233. In a 1921 survey in Columbus, Ohio, 115 out of 130 school teachers reported that they favored school segregation. A majority of the teachers stated that black children were "backward" and impeded the progress of white children. Many of these teachers also believed that black children were inherently inferior to white children. When asked about the wisdom of racial mixing, one high school teacher remarked that "[t]heir capacities are not the same, thus the one retards the possible progress of the other." Another intermediate school teacher commented that "[t]he very make-up of the races are [sic] different, and one race is repulsive to the other. Thus the teacher if she be of the white race cannot and will not give the attention to the negro that he should have." Ralph Garling Harshman, *Race Contact in Columbus, Ohio 19-20* (1921) (unpublished M.A. Thesis, The Ohio State University) (on file with The Ohio State University Libraries).

234. L.A. Pechstein, *The Problem of Negro Education in Northern and Border Cities*, 30 *ELEMENTARY SCH. J.* 192, 197-98 (1929).

235. See, e.g., *Kluxers Out in the Open*, *CLEVELAND GAZETTE*, Oct. 3, 1931, at 1; *The Dayton School Fight*, *CLEVELAND GAZETTE*, June 20, 1925, at 2; *CLEVELAND GAZETTE*, Feb. 21, 1925, at 2. George McCord, superintendent of the Springfield, Ohio, schools during that city's re-establishment of segregated schools during the early 1920s, was a Klan member. *Ku Klux Klan Victory!*, *CLEVELAND GAZETTE*, June 13, 1925, at 2.

mixed schools, an increasing number of blacks in Cincinnati sought the re-establishment of separate black schools.

Those blacks who favored segregated schools continued to emphasize, as they had during the nineteenth century, the importance of their children learning under the nurturing care of a black teacher, as opposed to what was frequently the indifference or even hostility of a white teacher.<sup>236</sup> Black sociologist Charles Johnson, though favoring school integration, described the negative experiences of black children in racially mixed classrooms with white teachers:

Minority children in mixed schools are made to feel "different" or "inferior," while there is a corresponding appropriation of superiority on the part of the majority. . . . Negro children meet the same situation, not alone in being discriminated against by schoolmates, but also, as [Horace Mann] Bond states, in the form of brutal treatment from white teachers who lose no opportunity to browbeat their Negro students. Teachers often stir up a student opinion, which lends itself to the distortion of the personality of Negro children.<sup>237</sup>

Because few northern school boards allowed a black person to teach a white child, separate black schools were the only way to ensure that black children would receive instruction from a black teacher.<sup>238</sup> The

---

236. W.E.B. Du Bois, *Education*, 24 THE CRISIS 252 (1922) (noting that black parents often prefer segregated schools due to fears of mistreatment); Charles H. Thompson, *Court Action the Only Reasonable Alternative to Remedy Immediate Abuses of the Negro Separate School*, 4 J. OF NEGRO EDUC. 419, 427 (1935) (noting acceptance of segregation by northern blacks due to concerns of mistreatment in mixed schools); Vincent P. Franklin, *The Persistence of School Segregation in the Urban North: An Historical Perspective*, 14 J. OF ETHNIC STUD. 51, 60 (1974). Elmer Curry a prominent black minister and educator in Ohio in the early twentieth century, spoke widely in favor of separate schools as better learning environments for black students. GERBER, *supra* note 37, at 393-95; Gail Berry, Wendell Phillips Dabney: Leader of the Negro Protest 55 (1965) (unpublished M.A. thesis, University of Cincinnati) (on file with University of Cincinnati Libraries).

237. Charles S. Johnson, *Children in Minority Groups* 13-14 (Oct. 8, 1941) (unpublished manuscript on file with Charles S. Johnson Papers, Box 158, Folder 29, Fisk University Library, Nashville, Tenn).

238. See W.E.B. Du Bois, *The Negro and the Northern Public Schools*, 25 THE CRISIS 205, 205 (March 1923) (noting that many northern blacks favored segregated schools in order to provide employment for black teachers); Lawrence D. Reddick, *The Education of Negroes in States Where Separate Schools are Not Legal*, 16 J. OF NEGRO EDUC. 290, 297-98 (1947) (noting that blacks favored segregated schools to provide jobs for black teachers and to avoid mistreatment of black children in white schools).

Not surprisingly, black teachers in the North enjoyed their greatest job prospects in school systems with large numbers of segregated schools. A 1929 study of fifty northern and border state cities found that Gary, Indiana, with firmly entrenched patterns of school segregation, had the largest number of black teachers in proportion to the black population. Pechstein, *supra* note 234, at 193-94. Cities with a large number of all-black schools, including Cincinnati, Gary, and Indianapolis, hired more black teachers than did cities where integrated schools were more common including Boston, Buffalo, and Pittsburgh. For example, in 1928, blacks comprised 11.8 % of the student population in Cincinnati and 6.5 % of the teachers; 8.6 % of the student population in Gary, and 12.9 % of the teachers; and 10.9 % of the student population in Indianapolis, and 12.6 % of the teachers. By comparison, blacks comprised 2 % of the student population in Boston, but only 0.1 % of the teachers; 1.7 % of the student population in Buffalo, but only .01 % of the teachers; 6.2 % of the school population in Pittsburgh, but 0 % of the teachers.



Cincinnati School Board, for example, barred black teachers from teaching white children until the middle of the twentieth century, a decision that would have a profound impact on black support for separate schools.<sup>239</sup>

One of the most forceful proponents in Cincinnati of the view that black children fared better in racially separate schools under the tutelage of black teachers was a black principal, Jennie Porter. For more than a quarter century until her death in 1936, Porter promoted segregated schools as vital to the development of both the black community and black children.<sup>240</sup> In 1928, Porter completed a doctoral thesis at the University of Cincinnati School of Education, an important center for the study of the effects of segregation on black children during the 1920s and 1930s, in which she analyzed the effects of racially mixed schools on black children. Porter concluded that because of the severe harassment that black children experienced in racially mixed schools, those blacks who attended racially segregated schools achieved greater academic success, remained in school longer, were more likely to graduate from high school, and enjoyed a greater *esprit de corps* than did those in mixed schools.<sup>241</sup> Porter noted, for example, that after enactment of the 1887 anti-segregation legislation in Ohio, many black students, now assigned to racially mixed schools, chose to drop out because of the abuse they confronted.<sup>242</sup> By way of example, Porter noted that a total of 125 black children had graduated from Cincinnati's all-black Gaines high school during the ten years prior to its closure in 1890, but that for the next *twenty* years, only ninety-five black children graduated from the city's racially mixed high schools, even though the Cincinnati's black population increased by seventy-four percent during that twenty-year time period. The only explanation for this dramatic decline in black graduation rates, argued Porter, was the harsh environment of the racially mixed school.<sup>243</sup> Porter explained: "Even if by law we force colored children into white schools, they will not be educated. They will be abused and kept in something worse than ignorance. Even in many

Porter, *supra* note 208, at 35-39.

239. Washington, *supra* note 143, at 17, 101-03. Moreover, the University of Cincinnati School of Education stopped offering student teaching for black teachers during the 1930s because of the city's segregated teacher practices. Robisch, *supra* note 20, at 96.

240. Porter extolled the black school as providing broad benefits to the black community: "The new school is used as a socializing agency, not only for the children, but also for the adults of the community. Under its guidance and control, come parents and children alike to engage in social recreation, literary programs, dancing, plays, and games." Porter, *supra* note 208, at 144.

241. *Id.* at 19-31. Porter commented: "Even in many of the best northern cities colored children while admitted to white schools, receive no inspiration or encouragement." *Id.* at 23.

242. *Id.* at 23.

243. *Id.* at 24-25, 27.

of the best northern cities colored children while admitted to white schools, receive no inspiration or encouragement."<sup>244</sup>

In addition to Porter, several other students and faculty at the University of Cincinnati School of Education lauded the advantages of school segregation.<sup>245</sup> Dean Louis Pechstein argued in 1929 that "the aims of education may be best realized by Negroes in separate public schools."<sup>246</sup> Pechstein claimed that "greater inspiration, greater racial solidarity, superior social activities, greater retention, and greater educational achievement are possible for Negroes in separate public schools than in mixed schools."<sup>247</sup> Despite his enthusiasm for segregated schools, Pechstein did concede that segregation "is not altogether consistent with the actual law in northern states."<sup>248</sup>

The question whether black children fared better in segregated schools was highly controversial in the black community. Howard University's Kelly Miller provoked a firestorm of controversy in the black community by arguing in an article published in 1922 in the *Chicago Defender* that all-black schools provided certain advantages for black children. In particular, Miller claimed that black children in segregated schools in border-state cities remained in school longer than did black children in racially mixed schools in northern cities and had "a keener incentive and zest."<sup>249</sup> In fact, studies conducted during the 1920s did show that black children in segregated schools tended to have

---

244. *Id.* at 22-23.

245. The University of Cincinnati School of Education would continue to examine the merits of racially separate schooling for the next several years. In 1930, Mary Roberts Crowley, for her doctoral thesis, studied the performance of black students, half in segregated schools and half in racially mixed schools. Crowley found essentially no statistically significant differences in academic achievement between the two groups, although she did find that black students in racially mixed schools performed slightly better in spelling and handwriting than did those in segregated schools. Mary R. Crowley, *Cincinnati's Experiment in Negro Education*, 1 J. OF NEGRO EDUC. 25, 30-33 (1932); Mary R. Crowley, *Comparison of the Academic Achievements of Cincinnati Negroes in Segregated and Mixed Schools* (1931) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with University of Cincinnati Libraries). Two years later, however, another graduate student, Inez Prosser, conducted a follow-up assessment of the educational and psychological progress of the students that Crowley had studied. Prosser concluded that "the personality traits of Negro children are developing more favorably in the environment of the segregated school than in the environment of the mixed school." J. St. Clair Price, *Current Literature on Negro Education*, 3 J. OF NEGRO EDUC. 269, 270 (1934) (quoting Inez B. Prosser, *Non-Academic Development of Negro Children in Mixed and Segregated Schools* (1933) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with University of Cincinnati Libraries)). These University of Cincinnati studies were used by school officials in many parts of Ohio to justify their retention of segregated schools. MCGINNIS, *supra* note 120, at 70.

246. Pechstein, *supra* note 234, at 198.

247. *Id.*

248. *Id.* at 195.

249. Chandler Owen, *Mistakes of Kelly Miller: Reply to Kelly Miller on Segregation in Education*, 4 THE MESSENGER 422, 422-24 (1922).



higher attendance and graduation rates in comparison to black children attending integrated schools.<sup>250</sup>

Robert Bagnall, Director of Branches for the NAACP, disputed Miller's findings, noting that schools in northern cities, with an abundance of southern migrants with poor educational backgrounds, would invariably fare worse in terms of high school graduation and attendance figures than would schools in border state cities.<sup>251</sup> Bagnall also argued that some segregated schools in border state cities had lower curricular standards and were located in communities with stronger traditions of support for black education.<sup>252</sup>

W.E.B. Du Bois, editor of the NAACP's *The Crisis* and a strong supporter of school integration during the 1920s, took a middle ground on the question of whether black children fared better in racially separate schools. Du Bois lamented the fact that a smaller percentage of black children graduated from integrated high schools in northern cities than from the segregated high schools in Washington, D.C., and the border states:<sup>253</sup> "Washington [D.C.] picks out and sends ten times as many Negroes to college as New York does."<sup>254</sup> But Du Bois challenged the view that this established the preferability of racially separate schools: "[I]s this an argument *for* segregation or *against* discrimination, cruelty, cheating and hate on the part of white pupils, teachers, and officials? . . . The success of some separate Negro schools is a crushing indictment of hatred and prejudice and not a demand for further segregation."<sup>255</sup> Du Bois would eventually conclude in 1934 that the ill treatment of black students in much of the country was so severe that racially separate schools were needed.<sup>256</sup>

Those blacks who favored separate schools also emphasized the role that black teachers played in providing leadership to the black

---

250. A 1929 study of fifty northern and border state cities found that black children had a higher attendance and graduation rate from high school in cities with only single-race schools than in cities with both integrated and segregated schools. Pechstein, *supra* note 234, at 194. Another study during the 1920s also found that black students attending segregated high schools in Washington, D.C., Baltimore, and St. Louis had higher attendance and graduation rates than did black students in integrated high schools in New York, Boston, and Philadelphia. Guy Michael Fultz, "Agitate Then, Brother": Education in the Black Monthly Periodical Press, 1900-1930, at 94, 207 (1987) (unpublished Ph.D. dissertation, Harvard University) (on file with Harvard University Libraries).

251. Robert Bagnall, *Why Separate Schools Should be Opposed*, 4 THE MESSENGER 485, 485-86 (1922).

252. *Id.*; see generally Lester Granger, *Race Relations and the School System*, 3 OPPORTUNITY 357 (Nov. 1925).

253. CARLETON MABEE, *BLACK EDUCATION IN NEW YORK STATE FROM COLONIAL TO MODERN TIMES* 248 (1979); Waller, *supra* note 209, at 148.

254. W.E.B. Du Bois, *Segregation in the North*, 41 THE CRISIS 115, 116 (Apr. 1934).

255. W.E.B. Du Bois, *Postscript: Peckstein and Pecksniff*, 36 THE CRISIS 313, 313 (Sept. 1929).

256. See, e.g., W.E. Burghart Du Bois, *Does the Negro Need Separate Schools*, 4 J. NEGRO EDUC. 328 (1935); Du Bois, *supra* note 254, at 115-17.

community. Teaching was one of the few fields open to blacks and black teachers tended to be among the most educated members of the community, enjoyed considerable prestige, and provided direction to their communities on an array of issues.<sup>257</sup> In 1910, over half of all black college graduates were school teachers; by 1930, that figure was still over forty percent.<sup>258</sup> But because so many northern school boards, as in Cincinnati, refused to deploy black teachers in racially mixed classrooms, the shift from segregation to integration had cost many black teachers their jobs and in the process had undermined an important source of black leadership. Black teacher James Hathaway Robinson complained that within three decades of the enactment of Ohio's anti-segregation law, Cincinnati's old generation of strong black leaders was gone.<sup>259</sup> In fact, the number of black teachers in Cincinnati declined by over sixty percent between 1886, the year prior to the enactment of Ohio's anti-segregation law, and 1908.<sup>260</sup>

Finally, many African Americans argued that black schools played an important role in the development of the black community in general. Cincinnati's Jennie Porter extolled the black school as providing broad benefits to the black community: "The new school is used as a socializing agency, not only for the children, but also for the adults of the community. Under its guidance and control, come parents and children alike to engage in social recreation, literary programs, dancing, plays, and games."<sup>261</sup> The Douglass School in Cincinnati, where Porter had taught in the early twentieth century,<sup>262</sup> was one such school. After school hours, the Douglass School offered supervised athletic contests, such as basketball and boxing, for neighborhood youths, as well as adult education, social clubs, various games, and a community branch of the public library.<sup>263</sup> Many northern blacks feared that with school integration, this function of the black school as a community center would be lost. Many whites viewed strong black schools such as the Douglass School as a justification for segregation. A white news reporter wrote in 1919 that the Douglass School represented "the chance to

---

257. Jacqueline Moore, *LEADING THE RACE: THE TRANSFORMATION OF THE BLACK ELITE IN THE NATION'S CAPITAL, 1880-1920*, at 86-87 (1999).

258. Fultz, *supra* note 250, at 269.

259. Andrea Tuttle Kornbluh, *James Hathaway Robinson and the Origins of Professional Social Work in the Black Community*, in *RACE AND THE CITY: WORK, COMMUNITY, AND PROTEST IN CINCINNATI, 1820-1970*, at 209 (Henry Louis Taylor, Jr. ed., 1993).

260. Kessen, *supra* note 14, at 146. The effects were more dramatic in other Ohio cities. Following enactment of anti-segregation legislation, every black teacher in Springfield had been fired. MEIER & RUDWICK, *supra* note 189, at 291-92.

261. Porter, *supra* note 208, at 144.

262. Kessen, *supra* note 14, at 145.

263. Kornbluh, *supra* note 259, at 212-13, 215.



teach the world the supreme truth that democracy means, not the wiping out of racial personality, but rather the cherishing of racial difference and the ennobling of diverse stocks for the enrichment of us all."<sup>264</sup>

Under the leadership of Porter, many blacks in Cincinnati petitioned local school authorities for segregated schools on two occasions during the first two decades of the century.<sup>265</sup> During the early twentieth century, over 2,000 blacks petitioned the Cincinnati School Board to build a new building for the Douglass School, which was the last remaining separate black school from the nineteenth century. The school board agreed, and in 1909, began construction of a new Douglass School.<sup>266</sup>

In the fall of 1912, a group of blacks organized a private kindergarten for black children in an old Cincinnati school building that soon attracted 125 students. In the spring of 1913, black educators discovered 147 black children in the city between the ages of eight and fourteen who were not attending any school; as a result, they opened a summer school at the kindergarten building for these students.<sup>267</sup> Impressed by this demand for separate black education, many blacks petitioned local school authorities for the establishment of another publicly supported black school in addition to Douglass. Jennie Porter supported the establishment of a second "colored school" on the grounds that children attending such a school would be removed from "all feeling of discrimination and race prejudice."<sup>268</sup> The school board responded favorably to this request, initially by establishing separate classes for black children with black teachers in racially mixed schools.<sup>269</sup> These arrangements, however, were supposed to be voluntary for those black children who preferred them.<sup>270</sup>

But other blacks in Cincinnati, under the leadership of Wendell Dabney, editor of the local black newspaper, *The Union*, vigorously opposed the spread of school segregation in Cincinnati. Dabney recognized that whites were all too eager to establish segregated schools:

264. R.H. Leavell, *What Does the Negro Want? The Answer of the Douglass School*, THE OUTLOOK 604, 606 (1919).

265. Washington, *supra* note 143, at 57-58, 86; Kornbluh, *supra* note 259, at 212-13; see *A Sermon For All of Our People*, CLEVELAND GAZETTE, May 1, 1927, at 1.

266. Washington, *supra* note 143, at 58. The president of the Cincinnati School Board announced upon laying the cornerstone of the new Douglass school: "There are many reasons why a school exclusively for the education of colored youth should be maintained . . . I believe it would be advisable to maintain more of these schools." The Negro in Cincinnati Public Schools, *supra* note 168, at 6.

267. Porter, *supra* note 208, at 132.

268. *Id.* at 133.

269. *Id.* at 133-34.

270. *Id.* at 134.

The whites generally favor separate schools. Regarding Negroes as being inferior, they deplore any association with them, except upon the basis of master and man, employer and servant. They are wise enough to realize that the doctrines of subserviency can not be enforced if white children are schooled with the colored, since school association and competition breed a spirit of equality . . . .<sup>271</sup>

Dabney, who founded a local NAACP branch in 1915 to fight school segregation, repeatedly locked horns with Porter, over the segregation issue.<sup>272</sup> When the Cincinnati School Board announced plans to establish a new separate black school, the Harriet Beecher Stowe School, in response to the request of Porter and other Cincinnati blacks, the local branch of the NAACP under Dabney's leadership announced its opposition and threatened litigation if the board proceeded with its plans. Both the NAACP and Porter presented the school board with counter-petitions on the segregation issue in December 1919. Porter presented the school board with a petition with over 6,000 signatures endorsing the new school, while the NAACP, inspired by a visit from Walter White, executive secretary of the NAACP, gathered over 11,000 signatures on a counter-petition expressing opposition.<sup>273</sup> The school board ultimately sided with Porter, establishing the Harriet Beecher Stowe School for black children.<sup>274</sup> In response to complaints that establishment of the Stowe School violated the Ohio prohibition on school segregation, the Board adopted a resolution that the school would "not be known distinctly as a school for Negroes" even though the Stowe School would be designated on official documents as a "colored" school and only black children would attend the Stowe School until its closure in 1961.<sup>275</sup>

During the 1920s, white insistence on school segregation increased. For example, in 1924, two local labor groups petitioned the Cincinnati school authorities to take action to reduce racial mixing in the schools, either through the establishment of additional separate schools or the use of segregated seating within racially mixed classrooms. Shortly thereafter, the school board established another separate black school as a satellite of the Stowe School. In 1927, a racially mixed school was

---

271. DABNEY, *supra* note 154, at 149.

272. Washington, *supra* note 143, at 83; Berry, *supra* note 236, at 56.

273. The Negro in Cincinnati Public Schools, *supra* note 168, at 5.

274. Washington, *supra* note 143, at 86. As with the Douglass school, naming this new separate black school after the nineteenth-century author also bore a certain irony. Stowe, during her lifetime, taught black and white children together in her small school. Montgomery, *supra* note 32, at 99-100.

275. Montgomery, *supra* note 32, at 106, 112; The Negro in Cincinnati's Public Schools, *supra* note 168, at 6.



converted to another separate black school; the white children were transferred to nearby schools.<sup>276</sup> Additional classrooms were established at the Stowe School to accommodate more black children.<sup>277</sup> During the 1930s, blacks petitioned for the conversion of other racially mixed schools to all-black status so as to procure positions for black teachers. Indeed, the board's insistence that no black teacher could teach a white child continued to play an important role in the establishment and retention of additional separate "colored schools."<sup>278</sup> On some occasions, whites joined black petition efforts in order to preserve the racial integrity of their schools.<sup>279</sup>

Moreover, by the mid-1920s, the Cincinnati School Board developed a disciplinary policy pursuant to which black children in racially mixed schools who misbehaved were transferred to one of the separate black schools. On one such occasion, the child's parent refused to consent and was threatened with incarceration. Eventually, a juvenile court judge heard the matter, ruling that school authorities had the right to transfer the black child to any school in the city, including one of the separate "colored schools." Finally, the school superintendent compromised, reassigning the black child to a different racially mixed school. But the school board continued to use this transfer policy to discipline misbehaving black children.<sup>280</sup>

Dabney blamed Cincinnati's black community for their complicity in the establishment of the separate black schools during the 1910s and 1920s: "Separate schools could neither be established nor maintained under law, were it not for the solicitation of many colored people who, through selfishness, ignorance or cowardice, submit to such conditions as the easiest method of getting colored teachers appointed."<sup>281</sup> Dabney criticized many in Cincinnati's black community for not having "the

276. Montgomery, *supra* note 32, at 112-13, 115.

277. *Id.* at 115.

278. *Id.* at 128.

279. *Id.* at 130. For example, in 1934, a group of whites petitioned the Cincinnati School Board to exclude black children from the Oyler School. They argued that it "is not wise to allow children who are approaching puberty to mingle with children of another race during that trying period of adolescence," and that the presence of black children "is harmful to the morale of our white boys and girls." The Negro in Cincinnati Public Schools, *supra* note 168, at 7. The local branch of the NAACP replied: "more and more we see evidence of a tendency to employ practices of discrimination and segregation in which the colored student is made to suffer humiliation in order to placate those who have strong race prejudice." *Id.* at 8.

280. Montgomery, *supra* note 32, at 125-26.

281. DABNEY, *supra* note 154, at 149. Of Jennie Porter, Dabney wrote:

**MOST WHITE PEOPLE WERE MADE TO ORDER FOR A WOMAN LIKE MISS PORTER.** When she gets thru her line of talk, tells of her work and sacrifice for the suffering little colored children who are victims of such awful discrimination in the mixed schools, it's all over but the shouting.

Montgomery, *supra* note 32, at 123 (quoting THE UNION, Dec. 10, 1920).

courage to fight for the rights of installing their teachers in mixed schools as was the case in dozens of other cities.”<sup>282</sup> In similar fashion, Harry Smith, a strong integrationist and publisher of the widely-read black newspaper, the *Cleveland Gazette*, attacked Cincinnati’s black community, particularly the newly arrived southern migrants, for petitioning the Cincinnati School Board for segregated schools: “What a pity they cannot be shipped back South where they belong and which they never should have left . . . . For a ‘Negro’ teacher they would trade vitally essential rights and privileges of all our people of Cincinnati.”<sup>283</sup>

In time, the conflict between Porter and the integrationist NAACP grew so severe that she forbade her teachers from joining the organization.<sup>284</sup> Ultimately, in 1931, the NAACP reached an accommodation with Porter pursuant to which the organization did not attack school segregation directly but instead sought to secure employment for black teachers in racially mixed schools.<sup>285</sup>

The Stowe School and its satellite campuses proved enormously popular in the Cincinnati black community.<sup>286</sup> By 1927, 3,020 black students attended the Stowe School or one of the city’s other black schools; 113 black teachers provided instruction.<sup>287</sup> By 1938, about 4,000 of Cincinnati’s 11,500 black pupils were attending one of the city’s separate black public schools.<sup>288</sup> Although black children were not required to attend these separate schools, white resistance to their attendance at many of the city’s racially mixed schools and the school board’s refusal to allow blacks to teach whites contributed to their desire to separate.

Those black children who remained in racially mixed schools confronted various forms of racial discrimination. In some racially mixed Cincinnati schools, black students were prohibited from using school swimming pools except at the end of the week before the pool was drained, or from competing with white children in games on the school playground, or from participating in any extracurricular activities such as glee clubs, French clubs, and honor societies.<sup>289</sup> In 1950, the

---

282. *Id.* at 115 (quoting CLEVELAND GAZETTE, May 21, 1927, at 1).

283. CLEVELAND GAZETTE, May 18, 1935, at 2.

284. Washington, *supra* note 143, at 94.

285. *Id.* at 20-21, 97-98. In 1934, for example, the NAACP protested the exclusion of blacks from the school board’s teacher training programs. The protest failed, as the school board candidly noted that black teachers in Cincinnati would be assigned only to black schools and those schools did not require additional teachers at that time. *Id.* at 98.

286. Porter, *supra* note 208, at 145.

287. *Id.* at 138. Moreover, in 1926, the Catholic Church in Cincinnati opened a segregated parochial school for black children. *Id.* at 139.

288. Douglas E. Scates, *Cincinnati Colored Teachers Set a Standard*, 7 J. NEGRO EDUC. 144, 144 (1938).

289. Porter, *supra* note 208, at 125-26, 156; Montgomery, *supra* note 32, at 127. In 1936, the local



Cincinnati School Board finally resolved the discriminatory use of swimming pools by removing swimming as a required part of physical education, making it voluntary instead.<sup>290</sup>

## V. SCHOOL DESEGREGATION IN CINCINNATI DURING THE DECADE PRIOR TO *BROWN*

During the 1940s, black support for school desegregation increased in Cincinnati, reflected in increased demands for an end to the exclusion of black teachers from racially mixed schools as well as an end to separate black schools. The NAACP played an important role in this shift in the Cincinnati black community.

During the early 1940s, the national office of the NAACP joined the Ohio school desegregation fight. Although most of the national legal staff's energies had theretofore been devoted to southern school segregation, Thurgood Marshall explained that "it is just as important to fight the segregated school system in the North and West as it is to fight for equal schools in the South."<sup>291</sup> In some parts of Ohio, blacks continued to support school segregation; in Dayton, for example, even the local NAACP branch refused to support desegregation efforts.<sup>292</sup>

Dismayed at the lack of black support for school desegregation in parts of Ohio, Marshall convened a meeting in 1946 in Columbus to assess the situation. At this meeting, Marshall secured the agreement of various branches of the NAACP in Ohio to engage in a fundraising campaign to support a legal effort against segregated schools and a public relations campaign to increase black support for the effort.<sup>293</sup> The national office of the NAACP prepared a manual for local branches

branch of the NAACP protested the existence of segregated swimming classes at the Walnut Hills High School. *The Negro in Cincinnati Public Schools*, *supra* note 168, at 9.

290. Montgomery, *supra* note 32, at 127, 136.

291. Memorandum to Members of the National Legal Committee from Thurgood Marshall (July 17, 1940) (on file with NAACP Papers, Box I-D-99, Library of Congress, Washington, D.C.).

292. Memorandum from Thurgood Marshall to Walter White (Nov. 6, 1945) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.). Marshall complained that the biggest problem in Dayton is not a legal problem but is a problem of educating the Negro community to be in a frame of mind to fight segregated schools. The majority of Negroes in Dayton are in favor of segregated schools and if this were not so, it would have been impossible to establish them.

*Id.*

293. Press Release, War on School Jim Crow Mapped by Ohio NAACP, Jan. 17, 1946 (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Letter from Marian Williams to Roy Wilkins, Jan. 18, 1946, (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Al Dunmore, *Objectively Yours*, PITTSBURGH COURIER, Jan. 5, 1946; Letter from Miley O. Williamson (June 7, 1945) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.).

in Ohio outlining methods of challenging school segregation<sup>294</sup> and dispatched attorney Robert Carter from the national office to build support among Ohio blacks for the desegregation campaign. Although Carter failed in his efforts to launch an extensive litigation campaign in Ohio,<sup>295</sup> the attention of the NAACP to the school segregation issue in Ohio during the 1940s helped build support for desegregation in the Ohio black community.

For example, the Cincinnati black community, under the leadership of attorney Theodore Berry, began to insist during the 1940s on the elimination of separate black schools and an end to the exclusion of black teachers from racially mixed schools. These integrationist efforts were aided by the fact that Jennie Porter, whose pro-segregation views had been so influential in Cincinnati, had died in 1936. Recognizing the importance of teacher integration to pupil integration, a group of blacks petitioned the Cincinnati School Board in 1942 for an end to the exclusion of black teachers from racially mixed schools. These blacks appropriated the rhetoric of democracy that filled the air during the early 1940s as America waged war against German and Japanese aggression:

Negroes feel that in a real democracy there should be no separation or discrimination of any kind . . . in the placing of teacher personnel. If this were a true democracy in every sense of the word, Negro teachers would be found in all of the schools and no discrimination would be found in any school.<sup>296</sup>

In response, the school board did assign a few black teachers to the racially mixed Twelfth District school in 1943, but then transferred the school's few white pupils to another school, rendering the Twelfth District yet another all-black school.<sup>297</sup> Black teachers would finally begin to teach in a racially mixed school in Cincinnati in 1948 when, in

---

294. Branch Action to Eliminate Segregated Schools (undated) (on file with NAACP Papers, Box II-B-137, Library of Congress, Washington, D.C.).

295. Carter arrived in Ohio with an ambitious agenda. He proposed filing "as many cases simultaneously within the state attacking segregation in the school system as possible" to "show that we are determined to fight segregation throughout the State." Letter from Robert Carter to J. Maynard Dickerson (May 14, 1946) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Memorandum from Robert Carter (undated) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.). Much of the Ohio black legal community, however, with a notable exception of Cincinnati's Theodore Berry, did not share Carter's enthusiasm for a sweeping litigation campaign. Carter expressed frustration with the lack of support among so many blacks in Ohio for desegregation and the "fear on the part of [Ohio] lawyers" to file desegregation lawsuits. Letter from Robert Carter to George Johnson (Sept. 14, 1946) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.).

296. Montgomery, *supra* note 32, at 132.

297. *Id.*



response to a request from the NAACP, a few black teachers were assigned to teach at the Dyer school, which was over ninety percent black.<sup>298</sup> During the early 1950s, a few other schools in Cincinnati used black teachers in racially mixed settings, but generally in schools with large numbers of black children.<sup>299</sup> Moreover, in 1953, the Cincinnati School Board began using white teachers at the city's separate black schools for the first time.<sup>300</sup> At the same time, the school board eliminated its separate eligibility lists for black teachers, merging the black and white eligibility lists.<sup>301</sup> But as of 1961, no black teacher had ever been assigned to teach in an all-white school.<sup>302</sup>

Even as the Cincinnati School Board began to break down the racial barriers in the teaching corps in the late 1940s, it retained the city's separate "colored schools." During the mid-1940s, the Cincinnati School Board recommended the construction of additional black schools; moreover, a 1945 report by the Bureau of Research of Ohio State University formally recommended retention of the city's separate black schools.<sup>303</sup>

The Cincinnati School Board retained its separate black schools until the eve of the *Brown* decision.<sup>304</sup> In 1953, the school board finally began to include the city's separate black schools in the overall geographic attendance plan.<sup>305</sup> Two years later, the Douglass school, the oldest of the separate black schools, was merged into the regular district school system and ceased operation as a "separate colored school."<sup>306</sup> But the school board continued its policy of allowing white students assigned to schools with large numbers of black students and black teachers to

---

298. Washington, *supra* note 143, at 17; Montgomery, *supra* note 32, at 133-34.

299. Montgomery, *supra* note 32, at 134-35.

300. Robisch, *supra* note 20, at 102.

301. *Id.* at 103.

302. *Id.* at 103-04.

303. Montgomery, *supra* note 32, at 138. In 1952, for example, the Springmeyer School District in Cincinnati refused to admit three black children who lived in the district to the local white schools and even rejected the local NAACP's appeal for monies to provide transportation for them to another school. As a result, these black children missed a year of school. Nina Mjagkij, *Behind the Scenes: The Cincinnati Urban League*, in *RACE AND THE CITY: WORK, COMMUNITY, AND PROTEST IN CINCINNATI, 1820-1970*, at 282 (Henry Louis Taylor, Jr. ed., 1993); TROTTER, *supra* note 215, at 157.

304. By the early 1950s, officially sanctioned segregation continued in Chagrin Falls, Cincinnati, Columbus, Dayton, Hamilton, Hillsboro, Middletown, and Oxford. Press Release, War on School Jim Crow Mapped by Ohio NAACP (Jan. 17, 1946) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Letter from Marian Williams to Roy Wilkins (Jan. 18, 1946) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); *Penick v. Columbus Bd. of Educ.*, 663 F.2d 24, 28 (6th Cir. 1981); *Brinkman v. Gilligan*, 583 F.2d 243, 249 (6th Cir. 1978).

305. Washington, *supra* note 143, at 21.

306. *Last of 'Color Line' Broken in City Schools*, CINCINNATI TIMES-STAR, Apr. 18, 1955, at 1; Robisch, *supra* note 20, at 105.

transfer to another school. Such a policy contributed to racial isolation in the city's schools.<sup>307</sup>

Moreover, when the Cincinnati School Board finally converted all of the "separate colored schools" to district schools, residential segregation was such that strict adherence to neighborhood schools resulted in racially separate schools.<sup>308</sup> Prior to the incorporation of the separate black schools into the city's school assignment plan, school authorities had followed a loose geographic attendance plan with many exceptions, including the separate black schools, vocational schools, and special high schools such as Walnut Hills, which drew students from throughout the city. But after the merger of the separate black schools into the overall assignment plan, the school board began to adhere to the geographic attendance zones with a great deal of precision.<sup>309</sup> In a city with considerable residential segregation, such adherence ensured that many of the city's schools remained all-black or all-white. Moreover, the use of racially restrictive covenants in Cincinnati even after the Supreme Court declared the enforcement of such covenants unconstitutional in 1948<sup>310</sup> would contribute to the continuation of residential segregation.<sup>311</sup>

At the same time, the Cincinnati School Board used racially gerrymandered school district lines both before and after the *Brown* decision to retain the racial integrity of many of the city's schools.<sup>312</sup> For example, a 1955 report favoring a certain configuration of district lines for a traditionally white school to exclude a black neighborhood candidly noted that:

The two major objections to the Mt. Washington Junior High School plan could be easily resolved by the elimination of the black Lincoln School district from the area to be served. The original 650 capacity figure would then be adequate. . . . At the same time, *practically all of the negro pupils would be eliminated.*<sup>313</sup>

Similarly, in 1956, Cincinnati's school authorities bused black children away from an overcrowded black school to a more distant black school, skipping other racially mixed schools closer at hand.<sup>314</sup>

---

307. Montgomery, *supra* note 32, at 141-42.

308. Washington, *supra* note 143, at 17.

309. Robert Manley, *The Neighborhood School: A Legal Perspective*, 38 CINCINNATI HIST. SOC'Y BULL. 137, 137-38 (1980).

310. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

311. *See supra* note 222.

312. Robisch, *supra* note 20, at 91; Montgomery, *supra* note 32, at 142-43.

313. Montgomery, *supra* note 32, at 144 (emphasis added).

314. *Id.* at 146.



In 1955, one year after the Supreme Court's *Brown* decision, the Ohio State Board of Education finally stopped requesting that local school boards report the number of black children attending "separate schools for colored children."<sup>315</sup> Not surprisingly, in many Ohio communities, serious desegregation efforts did not take place in Ohio until after the *Brown* decision; indeed, more school desegregation litigation was filed in Ohio during the post-*Brown* era than in any other northern state. Finally, in 1956, Ohio enacted legislation that gave authority to the State Board of Education to withhold state funds from those school districts that continued to operate segregated schools.<sup>316</sup>

### CONCLUSION

School segregation has not simply been a southern phenomenon. Blacks in Cincinnati have struggled since the early nineteenth century for inclusion in the city's public school system on a non-discriminatory basis, having first been excluded from the public schools altogether and then segregated into racially separate schools. Although anti-segregation legislation and litigation to enforce that legislation did on occasion operate to benefit those blacks seeking school integration, legal provisions were not enough to ensure a racially integrated school system in Cincinnati. Persistent white insistence on racial separation in the public schools, coupled with black support for segregation in order to shield black children from white hostility, combined to keep many of Cincinnati's black children in racially separate schools until the middle of the twentieth century. Although NAACP efforts helped end most—but not all—explicit school segregation in Cincinnati by the eve of the 1954 *Brown* decision, patterns of racial isolation in the public schools have continued in the city due to the presence of extensive residential segregation.

---

315. *Penick v. Columbus Bd. of Educ.*, 663 F.2d 24, 28 (6th Cir. 1981).

316. Press Release, Segregated Ohio Schools May Lose Funds (July 18, 1956) (on file with Claude Barnett Papers, Box 362-6, Chicago Historical Society, Chicago, Ill.).