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ARTICLES

THE ANTISLAVERY AND ABOLITIONIST BACKGROUND OF JOHN A. BINGHAM

*Richard L. Aynes**

Like many small towns in midwestern America, the courthouse of Cadiz, Ohio dominates its town square. There stands the statue of its favorite son: John A. Bingham. Bingham's public career was a long and distinguished one. He served as county prosecutor,¹ United States Congressman for sixteen years,² major and judge-advocate in the United States Volunteers,³ Solicitor of the Court of Claims,⁴ and Ambassador to Japan for twelve years.⁵

His name is inseparably linked with section 1 of the fourteenth amendment to the United States Constitution.⁶ He was its primary

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1. Bingham was elected prosecuting attorney of Tuscarawas County, Ohio and served in that position from 1846 until 1849. 3 C. MARSHALL, A HISTORY OF THE COURTS AND LAWYERS OF OHIO 860 (1934).

2. D. MORRIS & I. MORRIS, WHO WAS WHO IN AMERICAN POLITICS 82-83 (1974).

3. The report of Colonel F.C. Ainsworth, Chief Record and Pension Officer, indicates that on January 15, 1864, Bingham was commissioned as a major and judge-advocate of the volunteers. He served in that capacity until August 3, 1864 when, upon the tender of his resignation, he was honorably discharged. H.R. REP. NO. 890, 55th Cong., 2d Sess. 2 (1898).

4. Volume 1 of the United States Court of Claims Reports, on the inside cover sheet, indicates that Bingham was appointed solicitor of the court on July 29, 1864, and resigned on March 3, 1865. The date of his resignation coincides with his assumption of his seat in the House of Representatives to which he had been reelected after a two year absence.

5. D. MORRIS & I. MORRIS, *supra* note 2, at 82-83.

6. U.S. CONST. amend. XIV, § 1. Section 1 of the fourteenth amendment provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Id.

author,⁷ and Justice Black bestowed upon him the title: "Madison of the Fourteenth Amendment."⁸ Because of this link with the fourteenth amendment, Bingham's congressional speeches are frequently cited by commentators⁹ and the courts.¹⁰

Though Bingham may have been deemed a proper subject of a few local histories¹¹ and an occasional graduate student paper,¹² the legal profession has taken notice of him only within the context of what has been termed the "struggle for control of constitutional history" in the battle over the fourteenth amendment's scope and effect.¹³ Though this struggle may be viewed as a continuous one, it has not been without its ebbs and flows.

The initial contest came in the *Slaughter-House Cases*,¹⁴ at a time when all of the United States Supreme Court Justices had lived through the amendment's adoption. Relying upon their own knowledge and views of the intent of the amendment,¹⁵ and without reference to Bingham or the congressional debates,¹⁶ the Court refused to find protection against monopolies as one of

7. "All commentators credit John Bingham . . . with finally framing the fourteenth amendment after the Joint Committee rebuffed several of his earlier proposals." Dimond, *Strict Construction and Judicial Review of Racial Discrimination Under the Equal Protection Clause: Meeting Raoul Berger on Interpretivist Grounds*, 80 MICH. L. REV. 462, 481 (1982). For confirmation of these views, see B. KENDRICK, *THE JOURNAL OF THE JOINT COMMITTEE OF FIFTEEN ON RECONSTRUCTION* (1914).

8. *Adamson v. California*, 332 U.S. 45, 74 (1947) (Black, J., dissenting). This title has been used by others in referring to Bingham. See, e.g., Mendelson, *Raoul Berger's 14th Amendment—Abuse by Contraction v. Abuse by Expansion*, 6 HASTINGS CONST. L.Q. 437, 447 (1979).

9. R. BERGER, *GOVERNMENT BY JUDICIARY* 448 (1979) (over 100 entries under Bingham's name contained in the index). Professor Dimond's article focuses upon Bingham and contains numerous references to his speeches in both the text and the footnotes. See Dimond, *supra* note 7, at 481-94.

10. See, e.g., *Plyler v. Doe*, 457 U.S. 202, 214 (1982); *Monell v. Department of Social Servs.*, 436 U.S. 658, 685 n.45, 686-87 (1978); *id.* at 721-22 (Rehnquist, J., dissenting) (rejecting Bingham's views); *Duncan v. Louisiana*, 391 U.S. 145, 165 (1970).

11. See, e.g., *COMMEMORATIVE BIOGRAPHICAL RECORD, HARRISON, OHIO, CONTAINING BIOGRAPHICAL SKETCHES OF PROMINENT AND REPRESENTATIVE CITIZENS, AND OF MANY OF THE EARLY SETTLED FAMILIES* 12 (1891) [hereinafter *COMMEMORATIVE RECORD*].

12. See M. Brichford, *The Life of John A. Bingham* (1951) (unpublished Masters Thesis, Univ. of Wisc.); P. Dare, *John A. Bingham and Treaty Revision With Japan: 1873-1885* (1975) (unpublished doctoral dissertation, Univ. of Kentucky); B. Hasin, *John A. Bingham and Due Process* (1976) (unpublished masters thesis, California State Univ., Long Beach); C. Riggs, *The Ante-Bellum Career of John A. Bingham* (Dec. 1958) (unpublished doctoral dissertation, N.Y.U.).

13. This phrase, which is an apt one, is attributable to Aviam Soifer. See Soifer, *Protecting Civil Rights: A Critique of Raoul Berger's History*, 54 N.Y.U. L. REV. 651, 651 (1979).

14. 83 U.S. (16 Wall.) 36 (1873).

15. *Id.* at 68.

16. It appears that the first effort to use Bingham's views in interpreting the fourteenth

the privileges and immunities of national citizenship.¹⁷

The battle was joined again during the *Lochner* era¹⁸ with the Supreme Court's application of fourteenth amendment substantive due process concepts to protect certain economic interests. Those critical of the Court's decisions found there to be a "conspiracy" to "hide" such protection within the fourteenth amendment.¹⁹ Though their initial focus was upon Roscoe Conkling,²⁰ ultimately the critics felt that John Bingham, a "shrewd" and "successful railroad lawyer," was the real culprit.²¹ Apparently their attention was drawn to Bingham by Benjamin Kendrick's publication of the *Journal of the Committee of Fifteen on Reconstruction*²² which outlines the key role Bingham played in drafting section 1 of the amendment.²³ However, the work of Howard J. Graham and Louis B. Boudin established, beyond all reasonable doubt, that there was no conspiracy.²⁴ With the demise of sub-

amendment was made by J.Q.A. Fellows, counsel for the plaintiffs in the *Slaughter House Cases*, 83 U.S. (16 Wall.) 36 (1873), in his brief for the plaintiff's upon reargument which is captioned "History, Object, Aim and Intent of the 13th, 14th and 15th Amendments, and of the Contemporaneous Legislation." 6 LANDMARK BRIEFS AND ARGUMENTS 695, 696 (P. Kurland & G. Casper ed. 1975). During his survey of the legislative debate he cites several Congressmen including Bingham. *Id.* at 708-09, 711, 713-14. The Court, though indicating an awareness of the intent of the amendments, did not specifically cite any legislative history or any member of Congress.

17. *The Slaughter-House Cases*, 83 U.S. (16 Wall.) at 77-83.

18. *E.g.*, *Lochner v. New York*, 198 U.S. 45 (1905) (striking down limitations on the number of hours bakers could work). The "Lochner era" is generally thought to have commenced with *Allgeyer v. Louisiana*, 165 U.S. 578 (1897), and to have ended with *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937). See L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 567 (2d ed. 1987).

19. See E. BATES, *THE STORY OF CONGRESS* 233 (1936); C. BEARD, *CONTEMPORARY AMERICAN HISTORY: 1877-1913*, at 57 (1914); 2 C. BEARD & M. BEARD, *THE RISE OF AMERICAN CIVILIZATION* 112 (1927); S. DAGETT, *PRINCIPLES OF INLAND TRANSPORTATION* 436-37 (1934); F. FRIENDLY, *MINNESOTA RAG* 97 (1981); M. JOSEPHSON, *THE ROBBER BARRONS: THE GREAT AMERICAN CAPITALISM: 1886-1890*, at 52 (1934); H. TAYLOR, *THE ORIGIN AND GROWTH OF THE AMERICAN CONSTITUTION* (1911); Lerner, *The Supreme Court and American Capitalism*, 42 *YALE L.J.* 668, 691 (1933).

20. See C. BEARD, *supra* note 19, at 57.

21. 2 C. BEARD & M. BEARD, *supra* note 19, at 112; see also Boudin, *Truth and Fiction About the Fourteenth Amendment*, 16 *N.Y.U. L. REV.* 19, 21 n.4 (1938).

The reference to Bingham as a successful railroad lawyer remains unexplained. There is only one reported case in which Bingham was counsel that involved a railroad. In that case, Bingham represented a landowner who opposed the railroad's condemnation action. *Steubenville & Indiana R.R. v. Patrick*, 7 Ohio St. 170, 170 (1857). None of his other reported cases indicate any connections with large corporations.

22. Boudin, *supra* note 21, at 23.

23. B. KENDRICK, *supra* note 7, at 123.

24. Boudin, *supra* note 21, at 19; Graham, *The "Conspiracy Theory" of the Fourteenth Amendment* (pts. 1 & 2), 47 *YALE L.J.* 371 (1938), 48 *YALE L.J.* 171 (1938); see also Graham, *"Built Better Than They Knew": Part 1: The Framers, the Railroads and the Fourteenth Amendment*, 17 *U. PITT. L. REV.* 537, 571 (1956) [hereinafter Graham, "Built Better"].

stantive due process, the controversy about, and interest in, Bingham evaporated.

In 1947, the Supreme Court reopened the debate about the extent of the protections the fourteenth amendment afforded, with Justice Black relying in large part upon the statements of Representative Bingham and Senator Howard to conclude that the Bill of Rights was part of the privileges and immunities protected.²⁵ Justice Frankfurter advanced an opposite view.²⁶ For a time, Bingham's views became critical, and Charles Fairman opened the scholarly debate upon the intent of the framers of the fourteenth amendment and, incident to that, the role and views of Bingham himself.²⁷ W.W. Crosskey²⁸ and Jacobus tenBroek²⁹ joined the debate on the other side. But, with the Court's march toward "incorporating" further portions of the Bill of Rights through the due process clause, Bingham's views became less important.

In 1979 Raoul Berger published *Government by Judiciary*.³⁰ His thesis was that the Court had misread the fourteenth amendment at least to this extent: there was no intent to apply the Bill of Rights through the fourteenth amendment.³¹ More specifically, Berger suggested that the intent of the amendment's framers controlled and they intended it *not* to prevent segregated schools or to interfere in the state's power to regulate the right to vote.³² In Berger's view, this meant that the Court incorrectly decided both *Brown v. Board of Education*³³ and *Baker v. Carr*.³⁴ Berger quoted extensively from Congressman Bingham's House speeches—at times relying upon him as authority and at other times refusing to accept his statements as representative of those who proposed and adopted the fourteenth amendment.³⁵

Because Berger argued that much of current constitutional thought was not only wrong but illegitimate, it was predictable that many would assail

25. *Adamson v. California*, 332 U.S. 46, 73-89 (1947).

26. *Id.* at 59-60.

27. Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights? The Original Understanding*, 2 STAN. L. REV. 5, 19-139 (1949).

28. Crosskey, *Charles Fairman, "Legislative History," and the Constitutional Limitations on State Authority*, 22 U. CHI. L. REV. 1 (1954).

29. J. TENBROEK, *EQUAL UNDER LAW* (2d ed. 1965) (originally published as *THE ANTI-SLAVERY ORIGINS OF THE FOURTEENTH AMENDMENT*); see also Kelly, *Clio and the Court: An Illicit Love Affair*, 1965 SUP. CT. REV. 119.

30. R. BERGER, *supra* note 9, at 18.

31. *Id.*

32. *Id.* at 3, 18.

33. 347 U.S. 483 (1954).

34. 369 U.S. 186 (1962); see also *Reynolds v. Sims*, 377 U.S. 533 (1964).

35. See generally R. BERGER, *supra* note 9, at 136, 150.

his conclusions.³⁶ That reaction was perhaps exacerbated by Berger's willingness to produce stringent responses to his critics,³⁷ with the end result being numerous articles laced with frequent quotes from John Bingham.³⁸

Yet, other than identifying the name of John Bingham with the thoughts or quotations with which the author supports his or her view, and noting that he was a lawyer, little information has been presented about Bingham himself. This is perhaps natural, because the thoughts expressed in legislative debates may stand on their own merit.³⁹ Nevertheless, in order to present a consistent view some commentators, particularly those who, like Professors Fairman⁴⁰ and Berger, believe that the Bill of Rights was not designed to apply to the states, must analyze Bingham's logic and the effect that he had upon other members of Congress.

This approach prompted Michael Curtis to utilize Bingham's congressional biography to indicate that he was, in fact, a man of accomplishment who was well respected in his own time.⁴¹ Professor Paul Dimond enlarged upon this biographical information about Bingham for a somewhat different

36. An attempt to summarize the debate generated by Professor Berger and those who have written in response is set forth in Gangi, *Judicial Expansionism: An Evaluation of the Ongoing Debate*, 8 OHIO N.U.L. REV. 1, 14 (1981). That article provides citations to much of the commentary on Berger's *Government by Judiciary*. R. BERGER, *supra* note 9.

37. See, e.g., Berger, *The Scope of Judicial Review: An Ongoing Debate*, 6 HASTINGS CONST. L.Q. 590, 599 n.73, 600 (1979); Berger, *Soifer to the Rescue of History*, 32 S.C.L. REV. 427, 466 (1981).

38. An examination of Gangi, *supra* note 36, will reveal the pattern under which reviews and essays upon Berger's initial book or subsequent articles produced responses by Berger. For a more recent example compare: Curtis, *The Bill of Rights As A Limitation on State Authority: A Reply to Professor Berger*, 16 WAKE FOREST L. REV. 45 (1980) [hereinafter Curtis, *Reply to Berger*] ("replying" to GOVERNMENT BY JUDICIARY); Berger, *Incorporation of the Bill of Rights in the Fourteenth Amendment: A Nine-Lived Cat*, 42 OHIO ST. L.J. 435 (1981) (replying to Curtis' Wake Forest article); Curtis, *The Fourteenth Amendment and the Bill of Rights*, 14 CONN. L. REV. 237 (1982) and Curtis, *Further Adventures of the Nine-Lived Cat: A Response to Mr. Berger on Incorporation of the Bill of Rights*, 43 OHIO ST. L.J. 89 (1982) (replying to Berger's Ohio State article); Berger, *Incorporation of the Bill of Rights: A Reply to Michael Curtis' Response*, 44 OHIO ST. L.J. 1 (1983) (reply to Curtis' 1982 Ohio State article); Curtis, *Still Further Adventures of the Nine-Lived Cat: A Rebuttal to Raoul Berger's Reply on Application of the Bill of Rights to the States*, 62 N.C.L. REV. 517 (1984) (reply to Berger's 1983 Ohio State article); see also Curtis, *Judge Hand's History: An Analysis of History and Method in Jaffree v. Board of School Commissioners of Mobile County*, 86 W. VA. L. REV. 109 (1983). See generally M. CURTIS, NO STATE SHALL ABRIDGE (1986).

39. Mr. Berger has specifically disavowed any interest in Congressman Bingham's background: "The Framers were not swayed by a record of Bingham's prior sympathies but by what he said in the debates." Berger, *Lawyering vs. Philosophizing: Facts or Fancies*, 9 U. DAYTON L. REV. 171, 181 (1984).

40. Fairman, *supra* note 27, at 171-73.

41. Curtis, *Reply to Berger*, *supra* note 38, at 88 n.332.

purpose: to indicate the extent of Bingham's antislavery views.⁴² Professor Dimond's balanced approach draws upon the limited biographical data then available about Congressman Bingham. While always pointing out the limitations of that information, he suggests how the information may be relevant in supporting the inference that Bingham did intend the fourteenth amendment to apply the Bill of Rights to the states.⁴³ By taking this approach, though it is a minor portion of his work, Professor Dimond addressed a new aspect of the fourteenth amendment's history and made relevant further inquiry into the background of the man who is credited with having been its author.⁴⁴

It is the purpose of this Article to expand upon the point raised by Mr. Curtis and canvassed by Professor Dimond in order to make more readily available information concerning John Bingham's background that may be relevant to interpretations of the fourteenth amendment. Of particular interest here is his exposure to antislavery views and abolitionist ideas from his family, the community in which he spent part of his childhood, his education, his church, his legal studies, his law practice, his professional associates, and his political associates. The parallel between this background and his own political actions from the 1840 Presidential campaign until his retirement from public life in 1885 is the subject of a future study.

I. FAMILY INFLUENCES

Though little is known about John Bingham's early life, and less about his mother who died when he was about twelve years old, there is a tantalizing personal reference in his reply to Congressman Wadsworth:

I repeat the word which so moved the gentleman from his propriety, that chattel slavery is an 'infernal atrocity.' I thank God that *I learned to lisp it at my mother's knee.*⁴⁵

It matters little whether Bingham meant that his mother had literally taught him antislavery attitudes or only figuratively to indicate that he grew up in an antislavery environment. A more important question is whether Bing-

42. Dimond, *supra* note 7, at 482-94. For Berger's reply, see Berger, *Paul Dimond Fails to "Meet Raoul Berger on Interpretivist Grounds,"* 43 OHIO ST. L.J. 285 (1982).

43. Dimond, *supra* note 7, at 482-94.

44. Though interest in Bingham's background has been judged irrelevant by some, see, e.g., Berger, *supra* note 39, at 181, Dimond's treatment of Bingham's background has been found to be relevant by others. Saphire, *Judicial Review in the Name of the Constitution*, 8 U. DAYTON L. REV. 745, 774 n.115 (1983).

45. CONG. GLOBE, 37th Cong., 2d Sess. 1203 (1862), *quoted in* W. PITTENGER, ORATORY SACRED AND SECULAR: OR, THE EXTEMPORANEOUS SPEAKER 191 (1869) (emphasis added).

ham actually grew up in an antislavery environment—no matter what the source—or whether this was simply political hyperbole.

John Bingham, the son of Hugh Bingham and Ester Bailey Bingham, was born in Mercer County, Pennsylvania on January 21, 1815.⁴⁶ He lived in Mercer until his mother died in 1827.⁴⁷ Hugh Bingham, whose trade was carpentry,⁴⁸ was an early settler in Mercer County.⁴⁹ He was said to have served in the War of 1812 and the name Hugh Bingham appears in the lists of members of the Pennsylvania Militia, both as a private and paymaster.⁵⁰ Both his house and numerous land transactions suggest that he was relatively prosperous.⁵¹

An unsigned, undated family history refers to Hugh Bingham as "one of the leading men of Mercer County."⁵² While the accuracy of this may not be verified easily, it is evident that he was active in public affairs. He was elected to the town council in 1815, 1817, and 1825⁵³ and was elected county commissioner in 1840.⁵⁴ He ran, apparently unsuccessfully, for county auditor in 1811⁵⁵ and county sheriff in 1827.⁵⁶

He also served in a variety of other public or quasi-public positions. He

46. COMMEMORATIVE RECORD, *supra* note 11, at 9.

47. John A. Bingham Papers, Ohio Historical Society Microfilm at 4 (copy of the original in the possession of Milton Ronsheim) [hereinafter Bingham Papers].

48. DICTIONARY OF AMERICAN BIOGRAPHY 277 (A. Johnson ed. 1929).

49. HISTORY OF MERCER COUNTY, PENNSYLVANIA 104 (H. Everets & Co. ed. 1877). In approximately 1805, he built a brick house immediately opposite the court house. It still stands today and is used as a Republican Party Headquarters. HISTORICAL RESOURCES INVENTORY FOR MERCER COUNTY 21 (Mercer Cty. Regional Planning Commission 1977).

50. See 10 PENNSYLVANIA ARCHIVES 205 (1906); 9 PENNSYLVANIA ARCHIVES 23, 30, 644 (1905); 7 PENNSYLVANIA ARCHIVES 103 (1903).

51. His name appears upon the Grantor/Grantee indexes of Mercer County more than 60 times. See Grantor/Grantee Index of Mercer County, Pennsylvania [hereinafter Grantor/Grantee Index]. However, in some instances he is listed as "Bingham, Hugh, et al," in one instance as "Attorney in Fact," and in other instances the grantors bear official titles such as treasurer or trustee. See *id.*

52. Bingham Papers, *supra* note 47, Roll 1, Box 1, Folder 3, genealogical paper, at 3. Those who have analyzed social class origins generally consider the most critical indications to be wealth and occupation, though a secondary occupation, political activity, and education are also thought to be relevant factors. See summary in K. HALL, POLITICS OF JUSTICE: LOWER FEDERAL JUDICIAL SELECTION AND THE SECOND PARTY SYSTEM, 1829-61, at 179 (1979). Applying these criteria to Hugh Bingham would seem to place him in the prominent group—but certainly not within the elite. The same source indicates that if the "father's calling were known to a county historian, genealogist, obituary writer . . . then he must have been at least locally prominent." *Id.* at 178.

53. HISTORY OF MERCER COUNTY, PENNSYLVANIA, *supra* note 49, at 104.

54. *Id.* at 318.

55. The Western Press, Oct. 16, 1811, at 2, col. 1; The Western Press, Oct. 9, 1811, at 2, col. 2.

56. The Western Press, Sept. 12, 1827, at 3, col. 3.

was at one time the clerk of the county commissioners.⁵⁷ He served as the secretary to the Board of Managers of the Mercer and Meadville Turnpike Road Company⁵⁸ and as secretary to the Board of the Mercer Academy.⁵⁹ He was chairman of a community meeting in 1830 that called upon the surrounding counties' citizens to meet in convention to discuss a legislative petition on the Lake Erie extension of the Pennsylvania Canal.⁶⁰

While this indicates that Hugh Bingham was actively involved in politics, it gives little insight into his political beliefs⁶¹ or whether those beliefs had any effect upon his son, John. There is, however, information which is relevant to that inquiry. In 1836, Governor Joseph R. Ritner appointed Hugh Bingham to serve as Mercer County Clerk of Courts.⁶² He was apparently reappointed to that office in January of 1839 and served until October of

57. *E.g.*, *Receipts of Expenditures of the Treasury of Mercer County*, The Western Press, Mar. 9, 1820, at 3, col. 2; The Western Press, Mar. 5, 1822, at 3, col. 2.

58. *See Turnpike Election* notices under his name and title in The Western Press, Mar. 7, 1829, at 4, col. 3; The Western Press, Feb. 28, 1829, at 4, col. 3; The Western Press, Feb. 23, 1828, at 4, col. 3; The Western Press, Feb. 16, 1828, at 1, col. 2.

59. *Notice*, The Western Press, Oct. 28, 1823, at 3, col. 4 (published under his name and title).

60. I J. WHITE, A TWENTIETH CENTURY HISTORY OF MERCER COUNTY, PENNSYLVANIA 67 (1909).

61. *The Western Press*, published in Mercer County, was primarily a Democratic newspaper and on at least one occasion attacked Anti-Mason Governor Ritner for being a "patron of abolitionism, and negro suffrage." The Western Press, Apr. 14, 1838, at 2, col. 1. However, that same paper had, some years before, favorably reported an effort originating in the Pennsylvania Legislature to ask the representatives and senators to support the abolition of slavery in the District of Columbia. *Abolition of Slavery*, The Western Press, Apr. 5, 1823, at 3, col. 3. It might be argued that this response by a Democratic newspaper was indicative of the widespread antislavery sentiment in that area.

The Western Press, Sept. 25, 1811, at 1, col. 3, carries an account of the political meeting at which Hugh Bingham was nominated for the office of auditor and made a member of the committee of correspondence. The resolutions adopted included the following:

1. That all men are . . . born equally entitled to freedom and independence. . . .
2. . . . each man is, by birth, possessed of equal power, and an equal right to govern. . . .

Id. These resolutions, which may reflect the political philosophy of Hugh Bingham at that time, certainly sweep broadly enough to encompass advocacy of the rights of black people. However, because there is no specific mention with respect to race, it is difficult to determine whether the resolutions were intended to apply to black people.

62. Bingham was actually appointed to three clerkships: Prothonotary of the Court of Common Pleas; Clerk of the Orphans Court and of the several Courts of General Quarter Sessions of the Peace; and Clerk of Oyer and Terminer and General Jail Delivery. The separate orders of appointment, the bond, and the oath of office are recorded in the Deed Books of Mercer County. This appointment was made on Jan. 13, 1836. 10 PENNSYLVANIA ARCHIVES 8203 (1906).

It is possible that Hugh Bingham and Joseph Ritner were personally acquainted since Mercer County and Ritner's home of Washington County are separated by only two counties. By modern roads, the county seats are approximately 80 miles apart.

1839 when the office became elective.⁶³ His reappointment suggests that he kept political faith with his patron. If this was the case, then knowledge of Governor Ritner's politics may give some indication of Hugh Bingham's political beliefs.

Ritner had been Speaker of the House of the Pennsylvania Assembly.⁶⁴ He was the co-leader, with Thaddeus Stevens, of the Pennsylvania Anti-Mason Party.⁶⁵ The Anti-Mason party was said to have been particularly strong with Pennsylvania's Scotch-Irish Presbyterians, like the Bingham, who were opposed to oaths and secret societies.⁶⁶ Indeed, Ritner carried Mercer County not only in his successful election to the governorship in 1835,⁶⁷ but also in his unsuccessful campaigns of 1829 and 1832.⁶⁸ He held that office from 1835 until 1839.⁶⁹ Like Stevens, Ritner was a "promoter of common schools, and was distinguished for his opposition to slavery."⁷⁰

In 1836, the same year as Hugh Bingham's initial appointment, the southern legislatures had petitioned northern legislatures to take some action to restrain the abolitionist press. While every other northern governor responded by condemning the abolitionists,⁷¹ Ritner "sharply" denounced the southern demands.⁷² "[H]e alone of all the Governors of the Union in 1836 met the insulting demands and menaces of the South in a manner becoming

63. HISTORY OF MERCER COUNTY, PENNSYLVANIA 309 (Brown, Runk & Co. ed. 1888) [hereinafter HISTORY OF MERCER COUNTY].

64. WHO WAS WHO IN AMERICA 445 (Marquis ed. 1913).

65. Ritner and Stevens served in the assembly together and were both leaders in the Anti-Mason Party. One source suggests that Ritner "long distrusted Stevens" and "tried vainly to break his hold on the Anti-Mason Party, but finally he named him canal commissioner and manager of his 1838 campaign." 8 DICTIONARY OF AMERICAN BIOGRAPHY 629 (D. Malone ed. 1935); see also H. MUELLER, THE WHIG PARTY IN PENNSYLVANIA 30 n.1, 45 (1922). In 1841, Stevens tried unsuccessfully to persuade the Harrison administration to appoint Ritner collector of the port of Philadelphia. H. MUELLER, *supra* at 31 n.1, 75 n.2.

66. C. MCCARTHY, THE ANTIMASONIC PARTY: A STUDY OF POLITICAL ANTIMASONRY IN THE UNITED STATES, 1827-1840, at 427, 428, 547 (1903).

67. *Id.* at 470.

68. *Id.* at 432, 450.

69. LIPPINCOTT'S PRONOUNCING BIOGRAPHICAL DICTIONARY 2065 (5th ed. 1930).

70. *Id.* at 2065. Another source has described him as an "earnest opponent of slavery." 5 APPLETON'S CYCLOPEDIA OF AMERICAN BIOGRAPHY 262 (J. Wilson & J. Fiske ed. 1888).

71. F. BRODIE, THADDEUS STEVENS 64 (1959).

72. R. NYE, FETTERED FREEDOM 142 (1963). Stevens, chairman of the legislative subcommittee to study the petition, rendered an unfavorable report. *Id.*

It appears that this was a response to the message of the Governor of South Carolina who had requested the northern states to punish those who spoke out against slavery in other states as "incendiaries" who jeopardized the peace and safety of the states where slavery existed. Portions of this message are reprinted in Graham, *The Early Antislavery Backgrounds of the Fourteenth Amendment, Part II: II Systemization, 1835-1837*, 1950 WIS. L. REV. 610, 636-37 (quoting Philanthropist, Jan. 1, 1836, at 1, cols. 1-4).

Ritner's message is reprinted in 6 PAPERS OF THE GOVERNORS, 1832-1845, PENNSYLVANIA

a freeman and hater of Slavery"⁷³ Indeed, he denounced the Democrats for "basely bowing the knee to the dark spirit of slavery."⁷⁴

Ritner has been described as "one of the most outspoken and sincere abolitionists of his day."⁷⁵ When he ran for re-election in 1838, he was labeled by the opposition press in Bingham's home town, Mercer, as a "patron of abolitionism, and negro suffrage."⁷⁶ In concluding that Ritner was an abolitionist, one contemporary newspaper pointed to "his appointments to high and responsible stations of individuals notorious for their zeal in the cause of abolition."⁷⁷ Ritner, like Stevens, went on to become a Republican and was one of the delegates to the initial Republican Convention in 1856.⁷⁸

Hugh Bingham appears to have shared Ritner's antislavery views. Within that part of western Pennsylvania, the orientation of the Anti-Mason party was the same as that of Ritner: antislavery.⁷⁹ The voice of the Anti-Masons in Mercer was *The Luminary*, established in 1828.⁸⁰ In 1831 the newspaper was purchased by William F. Clark, who appears to have been not only an Anti-Mason, but also in the forefront of the antislavery movement. Under his editorship the paper supported the Whig Party in 1840, James Birney's

ARCHIVES 282-334 (G. Reed ed. 1901). It inspired J.G. Whittier's poem *Ritner*, which is reprinted in *THE COMPLETE POETICAL WORKS OF JOHN GREENLEAF WHITTIER* 275 (1894).

73. Preface to Whittier's poem *Ritner*, *THE COMPLETE POETICAL WORKS OF JOHN GREENLEAF WHITTIER* 275 (1894). The credit for this message is sometimes given to Thaddeus Stevens, F. BRODIE, *supra* note 71, at 64. Ritner was said to be "[m]ore independent than most contemporary executives of northern states," 8 *DICTIONARY OF AMERICAN BIOGRAPHY* 629 (D. Malone ed. 1935), and his response, his first message to the Pennsylvania Legislature as Governor, "denounced slavery in unmeasured terms." 2 *THE NATIONAL CYCLOPEDIA OF AMERICAN BIOGRAPHY* 287 (1921).

74. C. MCCARTHY, *supra* note 66, at 487.

75. 6 *PAPERS OF THE GOVERNORS, 1832-1845, PENNSYLVANIA ARCHIVES*, *supra* note 72, at 250.

76. *Democratic Nomination*, *The Western Press*, Apr. 14, 1838, at 2, col. 1.

77. C. MCCARTHY, *supra* note 66, at 492.

78. *PROCEEDINGS OF THE FIRST THREE REPUBLICAN NATIONAL CONVENTIONS OF 1856, 1860 AND 1864*, at 38 (1893) [hereinafter *PROCEEDINGS*]. Ritner was a Vice President of the Committee on Permanent Organization for Pennsylvania. *Id.* at 24. He addressed the convention on at least two occasions. *Id.* at 48, 58. In 1863, he was appointed to serve as one of the inspectors of the first state Normal School established in Erie, Pennsylvania. 2 *THE NATIONAL ENCYCLOPEDIA BIOGRAPHY* 286, 287 (1907). He died at his home in Carlisle, Pennsylvania on October 16, 1869, at the age of 89. *Id.*

79. M. Brichford, *supra* note 12, at 4. Riggs, in what seems to be a more careful study, also cites Brichford for this point. C. Riggs, *supra* note 12, at 7.

Even the opposition Democratic newspaper, which criticized Ritner as an "abolitionist" and supporter of Negro suffrage, seemed to support some form of antislavery sentiment by reprinting, from the *Christian Statesman*, an article giving a favorable report on the black community in Liberia and appealing for funds to support the efforts of the American Colonization Society. *Liberia*, *The Western Press*, Apr. 14, 1838, at 2, col. 1.

80. *HISTORY OF MERCER COUNTY, PENNSYLVANIA*, *supra* note 49, at 19.

Liberty Party in 1844, and the Free Soil Party in 1848.⁸¹ When the *Luminary* ceased publication in 1850, Clark next published the *Free Presbyterian* and then the *American Freeman*.⁸² He was a Republican by 1856.⁸³ In 1857, "a group of anti-slavery Republicans" established the *Mercer Dispatch* and Clark became the editor-in-chief.⁸⁴

John Bingham was apprenticed to the proprietor of *The Luminary* in 1831 at the age of sixteen.⁸⁵ Hugh Bingham's selection of an anti-Masonic newspaper as a place for his son to learn a trade would seem to confirm his own Anti-Mason and antislavery views. As to its effects upon John, the matter is not left totally to speculation. Long before the fourteenth amendment was drafted, his former employer wrote that he and John Bingham had fought "hell's masterpiece" (masonry) together and that John Bingham was not one to "be a friend of slavery or oppression."⁸⁶

Subsequently, Hugh Bingham became a member of the Whig Party. In the election of 1845, he was nominated by that party to run for the office of trustee.⁸⁷ Among the policies declared at the meeting where Hugh Bingham was nominated was "opposition to the extension of slavery over the territory of Texas, or any other country."⁸⁸

81. *Id.* By 1852, enough voters defected from the Whig to the Free-Soil ticket giving the Democrats a Congressional victory in the Beaver-Lawrence-Mercer district. H. MUELLER, *supra* note 65, at 200.

82. HISTORY OF MERCER COUNTY, PENNSYLVANIA, *supra* note 49, at 19.

83. The Mercer County Whig, July 9, 1856, at 2, col. 3.

84. HISTORY OF MERCER COUNTY, PENNSYLVANIA, *supra* note 49, at 19.

85. M. Brichford, *supra* note 12, at 4; C. Riggs, *supra* note 12, at 7.

86. Letter from John Bingham's former employer to New Lisbon Aurora, *reprinted in* Cadiz Democratic Sentinel, Nov. 8, 1854, at 2, col. 1, *quoted in* C. Riggs, *supra* note 12, at 7-8. It has been said that Bingham became an Anti-Mason during this time. HISTORY OF MERCER COUNTY, *supra* note 63, at 654-55. There is some evidence that as late as 1851 Bingham still opposed Masonry. After he had returned to Cadiz, his Cincinnati law partner, Alexander Todd, wrote Bingham complaining that business was bad and hoping that Bingham would not condemn him for allowing his Masonic friends to refer business to him. Todd wrote, "I have nothing, and at my time of life, it is my imperative duty to provide against my becoming a burden on society." Letter from Alexander Todd to John Bingham, Jan. 19, 1851, *referred to and quoted in part in* C. Riggs, *supra* note 12, at 89.

87. The Mercer County Whig, July 3, 1845, at 2, col. 5. The newspaper accounts do not indicate what the nature of this office was. This position was apparently as Trustee of the Mercer Academy. He lost that election. The Mercer County Whig, Oct. 21, 1845, at 3, col. 1.

88. The Mercer County Whig, July 3, 1845, at 2, col. 5. The Mercer County Whigs denounced the annexation of Texas as a "gigantic Scheme of Tyler, Calhoun & Co., for the extension and perpetuation of American slavery." The Mercer County Whig, July 10, 1845, at 2, col. 5. However, like Whigs elsewhere, they blamed the annexation upon the abolitionist presidential candidate obtaining enough votes to deprive Clay of the Presidency. The commentary on that subject is instructive on their views of both slavery and the abolitionists:

Let [the abolitionists] now throw up their hats and screech the loud peans to the Moloch of slavery, as the bloody god swallows his new victims, offered up by their

In 1846, Hugh Bingham was nominated to run for the office of trustee of the Mercer Academy.⁸⁹ While the platform adopted at that meeting was primarily directed against the free trade policy, one of the resolutions indicated that the original opposition to the annexation of Texas was motivated, in part, by a feeling that it would extend "the abominable institution of slavery over additional territory."⁹⁰ Mercer County's Whig Party announced that because such annexation extended principles of free trade and slavery, it would "oppose any further addition of territory to the southern section of the Union."⁹¹ Further, the resolution indicated: "We believe the primary object of the present war with Mexico to be to extend Southern principles and Southern institutions."⁹² It accordingly called upon people of all parties to oppose further annexation.

John Bingham was apparently on good terms with his father throughout his life. In 1859, when he and his family left Cadiz for Congress, the local paper indicated that he intended to stop in Mercer to spend a few days with his father.⁹³ Later, when informing his children of his father's death, he referred to him as "my dear father" whom the grandchildren "loved so much."⁹⁴

A second family influence upon John Bingham was his uncle Thomas Bingham, his future father-in-law. Like his brother Hugh, Thomas had lived in Mercer. Though involved in local politics⁹⁵ and land transactions,⁹⁶ he made his living as a merchant.⁹⁷ He subsequently moved to Cadiz, Ohio,

willing hands. Let them by their shouts if they can drown the wailings and groans of the fathers, mothers, husbands, wives and children, whom in their accursed instrumentality has torn from fond embraces of earth's dearest ties, to sweat and groan and bleed and die, upon the burning soil of Texas!

Id.

89. *Afternoon Session*, The Mercer County Whig, Aug. 11, 1846, at 3, col. 6.

90. *Id.* at 3, col. 1.

91. *Id.*

92. *Id.*

93. C. Riggs, *supra* note 12, at 290 n.24 (citing The Cadiz Republican, Nov. 30, 1859, at 2, col. 1).

94. Letter from John Bingham to his children (Jan. 17, 1866), Bingham papers.

95. Thomas Bingham was postmaster in Mercer from July 1, 1810 until October 1, 1816, during the administrations of James Madison and James Monroe. HISTORY OF MERCER COUNTY, PENNSYLVANIA, *supra* note 49, at 109.

96. A search of the early deeds recorded in Mercer County indicates that his name appears as a grantor nine times and a grantee eleven times. Some of these transactions involved his brother Hugh.

97. See the advertisement in The Western Press, Feb. 6, 1813, at 3, col. 4, indicating that the subscriber had "DRY GOODS, HARDWARE, QUEENSWARE, GROCERIES & LIQUORS" for sale. That same advertisement, in accordance with the practice of the times, "invited" those indebted to Thomas Bingham to come forward to pay their debts. *Id.*

which is situated in Harrison County.⁹⁸ He was reputed to be a “well-to-do” merchant and “more prosperous” than his brother Hugh.⁹⁹

Thomas Bingham was in a position to have an extraordinary amount of influence upon his nephew because John went to live with his uncle in Cadiz¹⁰⁰ in 1827, after the death of his mother. John lived as a member of his uncle’s household until 1831 when he returned to Mercer.¹⁰¹ He later spent approximately two years at Franklin College in New Athens, Ohio, which is six miles from Cadiz.¹⁰² During college he returned to Cadiz frequently.¹⁰³ After reading law in Pennsylvania, he returned to Cadiz in 1840

98. Because Cadiz was on the road between Pittsburgh and Wheeling, it was an intersection for trade. Though the exact year that Thomas Bingham moved to Cadiz is not known, it must have been after 1816 but before 1820. He served until 1816 as postmaster of Mercer. See *supra* note 95. The accounts of the receipts and expenditures of the treasurer of Harrison County, Ohio, for the period covering June 9, 1820 to June 9, 1821, indicate that in August of 1820 Thomas Bingham paid \$6.66 for a store license. The Harrison Telegraph, Aug. 22, 1821, at 2, col. 1.

99. W. SHOTWELL, *DRIFTWOOD* 175, 179 (1927). While Walter G. Shotwell was not born until 1856, his father had been a contemporary of John Bingham. His family was prominent in Cadiz. Both Shotwells, father and son, were lawyers. The younger Shotwell served as the Harrison County Prosecutor from 1888 until 1893 and as Court of Common Pleas Judge from 1899 to 1913. W. NEFF, *BENCH AND BAR OF NORTHERN OHIO* 650-51 (1921). He was somewhat of a historian, who authored at least two books. See W. SHOTWELL, *THE CIVIL WAR IN AMERICA* (1923); W. SHOTWELL, *THE LIFE OF CHARLES SUMNER* (1910). His “biography” of Bingham, contained in *Driftwood*, while sympathetic, is not adulatory.

Thomas Bingham’s prosperity seems to be confirmed by the fact that he was said to often have loaned money to his church and accepted less than full repayment. See C. HANNA, *HISTORICAL COLLECTIONS OF HARRISON COUNTY IN THE STATE OF OHIO* 141 (1900). He was also involved in a proposal to establish a bank in Cadiz under which he would give certain property to the enterprise and in exchange receive bonds bearing interest at a rate of 6%. See Shotwell Family Papers (available at Ohio Historical Society, Columbus, Ohio) (letter from Thomas Bingham to John Olmstead, D.D. John McBean, and Joseph Hunter (Apr. 16, 1847)).

Bingham occasionally advertised goods for sale at his store. *E.g.*, The Harrison Telegraph, Mar. 27, 1824, at 2, col. 4; The Harrison Telegraph, Mar. 20, 1824, at 2, col. 3; The Harrison Telegraph, Mar. 13, 1824, at 2, col. 4. It was common for him to publish a *Notice* seeking to have those indebted to him pay on their bills. *E.g.*, The Harrison Telegraph, Aug. 2, 1828, at 2, col. 3; The Harrison Telegraph, Jan. 10, 1824, at 3, col. 4; The Harrison Telegraph, Jan. 30, 1822, at 3, col. 4. He was occasionally involved in suits over land, though it is not entirely clear whether these suits were the result of joint ventures or of his role as a creditor. *E.g.*, The Harrison Telegraph, Dec. 8, 1832, at 3, col. 4 (announcement of sale of land to satisfy judgment obtained by T. Bingham); The Harrison Telegraph, Jan. 7, 1826, at 3, col. 3 (announcement of filing of suit by Thomas Bingham for petition of land of deceased, in which Bingham claimed one-half interest). On at least one occasion he attempted to sell a farm of 120 acres located outside of Cadiz. *Valuable Land for Sale*, The Harrison Telegraph, Dec. 8, 1832 at 1, col. 2.

100. W. SHOTWELL, *supra* note 99, at 175.

101. *Id.* at 178.

102. *Id.* at 178-79.

103. M. Brichford, *supra* note 12, at 7.

and, in 1844, married his cousin Amanda, Thomas' daughter.¹⁰⁴

While in Cadiz, Thomas Bingham continued his involvement in local government, first as the "President" of the Borough of Cadiz¹⁰⁵ and then as an Associate Judge of the Harrison County Court of Common Pleas.¹⁰⁶ Though he was not a lawyer, Thomas Bingham was twice elected by the Ohio Legislature to the position of associate judge, serving from 1825 to

104. C. Riggs, *supra* note 12, at 13-14, 40-41.

105. This was an elective position. An Act to incorporate the town of Cadiz. 29 Ohio Laws 180 (1831). The newspapers for 1824 carry several ordinances passed bearing the name of Thomas Bingham as President. *E.g.*, The Harrison Telegraph, Dec. 18, 1824, at 3, col. 4; The Harrison Telegraph, July 3, 1824, at 4, col. 1; The Harrison Telegraph, June 26, 1824, at 4, col. 3. The term of office was one year. The papers of 1825 indicated that Daniel Morris was President. *E.g.*, The Harrison Telegraph, Mar. 26, 1825, at 3, col. 4.

106. Ohio had a judicial system under which there was no single judge who presided at trials in the courts of general jurisdiction. Rather, provision was made for each court to be composed of a president judge and, at the option of the legislature, either two or three associate judges. OHIO CONST. of 1802, art. III, § 3 (1808), *reprinted in* 7 SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS 477 (1978). This same system also prevailed in Pennsylvania. HISTORY OF CRAWFORD COUNTY, PENNSYLVANIA 300 (Warner, Beers & Co. ed. 1885). A similar system had been used in the early colonies. *E.g.*, Concessions of West New Jersey, ch. 19 (Oct. 26, 1775), *reprinted in* R. PERRY & J. COOPER, SOURCES OF OUR LIBERTIES 186 (1978) ("there shall be in every court, three justices or commissioners, who shall sit with the twelve men of the neighbourhood").

Though the Ohio Constitution itself spelled out no qualifications, it was apparently understood that the president judge was to be an attorney, but that the associate judges need not be. *See generally* 2 C. GOSS, CINCINNATI—THE QUEEN CITY, 1788-1912, at 161 (1912); 2 C. MARSHALL, A HISTORY OF THE COURTS AND LAWYERS OF OHIO 189, 369 (1934); Reed, *History of the Ohio Judiciary*, 9 OHIO ST. B.A. REP. 206 (1888).

The term of office of an associate judge was seven years and selection was by a joint ballot of the legislature. OHIO CONST. of 1802, art. III, § 8 (1808), *reprinted in* 7 SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS 477 (1978). As in many cases, the formal appointment procedure appears to have an underlying informal one. The citizens of the county were invited to attend a public meeting in the Court house to "elect" a person to be recommended to the legislature for the position. *County Meeting*, The Harrison Telegraph, May 29, 1824, at 3, col. 2. Bingham was assumptively "elected" at that meeting; received an interim appointment from the Governor; and was later elected by the Legislature. *See* The Harrison Telegraph, Jan. 29, 1825, at 3, col. 1. Bingham's successor was chosen through this same process, though by a meeting of the local Democrats. The Organ, Dec. 27, 1838, at 3, col. 1.

The value of the Ohio system has been questioned. *See* CENTENNIAL HISTORY OF BELMONT COUNTY, OHIO AND REPRESENTATIVE CITIZENS 107 (A. McKelvey ed. 1903); 2 C. GOSS, *supra*, at 161; W. HUNT, HISTORICAL COLLECTIONS OF COSHOCTON COUNTY (Supp. 1967); 2 C. MARSHALL, *supra*, at 369; Reed, *supra*, at 230. There is no question, however, that the position of associate judge was an important one: any three of the judges constituted a quorum; the majority ruled in all instances, and could overrule the president judge even on matters of law or evidence; the lay judges conducted cases in which the president judge had been counsel or otherwise had a conflict; and because the president judge rode the circuit, the associate judges, who were appointed only for their respective counties, routinely discharged the probate and administrative functions of the court by themselves. OHIO CONST. of 1802, art. III, § 3 (1808), *reprinted in* 7 SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS 477 (1978); C. MARSHALL, *supra*, at 369.

1839.¹⁰⁷ Bingham's initial appointment to the bench by the legislature was made at a time when the Jeffersonians were in power and there was almost no opposition party. The Ohio Whig Party was formed in 1836, and by 1839 Thomas Bingham was listed as a member of that party's central committee in Harrison County.¹⁰⁸ He continued to serve on that committee in 1840¹⁰⁹ and was a delegate to the Whig state convention that same year.¹¹⁰ This is not surprising, not only given his class and background, but also given the fact that his nephew and future son-in-law, John Bingham, was actively campaigning in Ohio for Whig Presidential candidate William Henry Harrison and that his son-in-law, Josiah Scott, was also a member of the same party.¹¹¹

A second factor that may shed light on Thomas Bingham's political beliefs was his association with the Associate Reformed Presbyterian Church. Bingham, one of the original incorporators and a trustee of this church,¹¹² was also one of its key financial supporters.¹¹³ One study suggests that "the Associate Reformed Church was one of the more radical adherents to anti-slavery doctrine."¹¹⁴ Church membership and support was at least consistent with antislavery feelings.

Finally, it would not be unnatural to assume that Thomas Bingham played a role in the selection of Franklin College as a suitable place for his nephew to study. He was no doubt intimately familiar with the antislavery

107. There is a suggestion that Thomas Bingham was one of the "old school" lawyers who "did little more than advise, rarely ever trying a case." CARROLL AND HARRISON COUNTIES 288 (1921). This author has found no indication that he was ever admitted to the bar. Shotwell, who was in a position to know, refers to him as a merchant. W. SHOTWELL, *supra* note 99, at 175, 179. While his name appears on several wills recorded in Harrison County, it is always as an executor or witness.

108. *County Meeting*, The Organ, June 6, 1839, at 3, col. 1.

109. *E.g.*, *General Democratic Harrison Meeting in Cadiz*, The Organ, Mar. 5, 1840, at 3, col. 2. At this time the Whigs referred to themselves as the Democratic Whig Party. They refused to refer to the opposition party as Democrats and used the term "Locofocos" to refer to them.

110. The Organ, Jan. 16, 1840, at 3, col. 1.

111. W. SHOTWELL, *supra* note 99, at 181-83 (Bingham); C. Riggs, *supra* note 12, at 19-20 (Scott).

112. An Act to incorporate the Trustees of the First Associate Reformed Church, in the town of Cadiz, Feb. 18, 1830, 1830 Ohio Laws 103-04.

113. C. HANNA, *supra* note 99, at 140-41, (quoting Sermon of Rev. W.T. Meloy of the United Presbyterian Church at Cadiz on Aug. 26, 1876). In 1830, Thomas Bingham was one of the five incorporators of the church. 1830 Ohio Laws 103. He was a member of the church's building committee and was said to have "very often" loaned the church money, taking repayment in "even hundreds and deducting the odd dollars and cents." C. HANNA, *supra* note 99, at 141.

114. C. Riggs, *supra* note 12, at 6 n.13 (citing R. O'Dell, *The Early Anti-Slavery Movement in Ohio* (1948) (unpublished doctoral dissertation, Univ. of Michigan)).

views of the college's leader, Reverend John Walker, who had been pastor of the Associate Congregational Church of Cadiz.¹¹⁵ The antislavery nature of the college is important to understanding John Bingham's development.¹¹⁶ However, here the significance is that Thomas Bingham would have assented to the selection of such a college. This is consistent with the belief that he, too, was supportive of antislavery doctrine.

II. CHILDHOOD IN CADIZ

While it is impossible to reconstruct the political climate in which John Bingham was raised, some indication can be gathered from what is known about Cadiz community members. The only one of Bingham's childhood contemporaries about whom information is available is Bishop Matthew Simpson. Bingham indicated that he and Simpson were "friends in boyhood, although he was my senior by three or four years."¹¹⁷ Bishop Matthew Simpson was described by a local historian as "the ablest prelate of the Methodist Episcopal Church in America."¹¹⁸ As late as 1942 he was judged by some to have been one of the six leading protestant ministers in American history.¹¹⁹ He was an advisor and close friend of President Abraham Lincoln¹²⁰ and a close friend of General Ulysses S. Grant.¹²¹

Simpson was prominent in political, as well as religious affairs. By the end of his life, he was considered a fervent radical. It is difficult, however, to judge the exact extent of Simpson's early antislavery feeling. He was said to have formed "strong attachment" early in his life for Henry Clay who was seen by many, at least prior to the compromise of 1850, as being an antislavery leader.¹²²

Ezra Morgan Wood, Simpson's admiring biographer, summarized his views as follows: "Being strongly antislavery, yet he was not an abolitionist in the party sense . . . his greatest efforts were directed against the extension of slavery in the territories."¹²³ However, this same author also concluded:

115. W. SHOTWELL, *supra* note 99, at 188; *see also infra* notes 206-34 and accompanying text.

116. *See infra* notes 208-41 and accompanying text.

117. *Hon. John A. Bingham Dead*, *The Harrison News*, Mar. 21, 1900, at 2, col. 6.

118. Hunter, *The Pathfinders of Jefferson County*, VI OHIO ARCHAEOLOGICAL & HIST. Q. 95, 257 (1898).

119. C. MCCARTNEY, *SIX KINGS OF THE AMERICAN PULPIT* 53 (1942).

120. E. WOOD, *THE PEERLESS ORATOR* 152 (1909).

121. Hunter, *supra* note 118, at 258.

122. E. WOOD, *supra* note 120, at 52. *But see infra* notes 149-53 and accompanying text on Simpson's Uncle Joseph Tingley and his opposition to Clay because he was a slaveholder.

123. *Id.* The same author indicates that during a later part of his career as an editor "he became involved with some newspapers in a sharp controversy on the slavery question." *Id.* at

"He never changed his party politics or national patriotism. He was at first an anti-slavery Whig but they united with the Free-Soilers and formed the Republican party and he became a Republican and so remained ever after."¹²⁴

During the war, supposedly at President Lincoln's request, Simpson gave pro-Union speeches in many of the nation's largest cities.¹²⁵ In 1863, he was asked by Secretary of War Edwin Stanton to head a commission to visit four areas under Union control to "examine the condition of the [black] people and make suggestions"—a task that he declined.¹²⁶ However, it is clear that Simpson urged President Lincoln to issue the Emancipation Proclamation earlier than he did.¹²⁷ Additionally, it has been said that Lincoln requested that Simpson come to Washington where he met and prayed with the President the evening he made his decision to issue the proclamation.¹²⁸

In 1864, Simpson was chosen to deliver a speech in support of Lincoln shortly before the election, with the promise that because the speech would be reported in the major newspapers, he would actually be speaking to the nation.¹²⁹ In the summer of 1864, he was chosen by President Lincoln to speak in his place at the opening of the Sanitary Fair in Philadelphia.¹³⁰ He was also selected to give the oration at President Lincoln's funeral, both at the White House¹³¹ and in Springfield, Illinois.¹³²

After the war, Simpson devoted his efforts to "Methodist Reconstruction" under which he sought to reclaim Southern Methodist Churches and staff them with loyal unionist ministers.¹³³ President Andrew Johnson's actions

53. However, nothing more is indicated as to the nature of the controversy, or even which side Simpson took, and no other reference to it has been discovered.

124. *Id.* at 184. In a passage which reveals Wood's perspective, he indicates that Salmon P. Chase "most heartily endorsed Bishop Simpson's position on the slavery question and they were in frequent correspondence and intimate fellowship." *Id.* at 104. However, no reference is made to the period of time to which he is referring.

125. *Id.* at 158.

126. G. CROOKS, *THE LIFE OF BISHOP MATTHEW SIMPSON OF THE METHODIST EPISCOPAL CHURCH* 385 (1890).

127. E. WOOD, *supra* note 120, at 153.

128. *Id.* Wood indicates that while he was working with Simpson on the *Cyclopedia of Methodism* in Simpson's library, Simpson told him of this incident and said that when they arose from praying, Lincoln took the Bishop by the hand and said, "I will do it." *Id.* at 153. A later author claims this account is incorrect. R. CLARK, *THE LIFE OF MATTHEW SIMPSON* 221-22 (1956).

129. G. CROOKS, *supra* note 126, at 379.

130. R. CLARK, *supra* note 128, at 238.

131. *Id.* at 246-48.

132. E. WOOD, *supra* note 120, at 154-56 (portions of the funeral oration are reprinted at 155-56).

133. See generally R. CLARK, *supra* note 128, at 253-57, 262-63.

in supporting the Southern Methodists, and Bishop Simpson's close friendship with two of the most radical members of the cabinet, Edwin Stanton (whom he had known in Cadiz) and James Harlan (a Methodist and former student), led Simpson increasingly into the radical camp.¹³⁴ Indeed, Robert D. Clark, another of Simpson's biographers, entitled one of the chapters of his biography, *High Priest of the Radical Republicans*.¹³⁵

In 1868 Simpson helped the General Conference of the Methodists adopt a resolution designed to influence West Virginia Senator Waitman T. Willey to vote to remove President Andrew Johnson from office.¹³⁶ He gave the opening prayer at the Republican National Convention of 1868.¹³⁷ Simpson's influence on national politics continued, in part, because of his friendship with Presidents Ulysses S. Grant and Rutherford B. Hayes.¹³⁸

In addition, three of Cadiz's leading citizens, all related to Bishop Matthew Simpson, were early adherents to the antislavery movement. One uncle of Bishop Simpson's was Joseph Tingley who founded *The Harrison Telegraph* in 1820 and was its editor until 1824.¹³⁹ Because Joseph Tingley died in 1825¹⁴⁰ and John Bingham did not come to live in Cadiz until 1827, Tingley obviously had no direct influence upon Bingham. Nevertheless, that newspaper's antislavery sentiments are relevant both to the temper of the community in general and to the views of those with whom his uncle, Thomas Bingham, was associated.

Though by no means a paper exclusively devoted to antislavery issues, *The Harrison Telegraph* nevertheless had a consistent number of articles concerning race and slavery. For example, several issues contained articles, some of which were quite lengthy, that provided positive accounts of Haiti's black government.¹⁴¹ Further, *The Harrison Telegraph* somewhat routinely

134. *Id.* at 257.

135. *Id.* at 245.

136. *Id.* at vii, 259-61.

137. W. JOHNSON, OFFICIAL PROCEEDINGS OF THE NATIONAL UNION REPUBLICAN CONVENTIONS OF 1868, 1872, 1876, AND 1880, at 6-8 (1903).

138. R. CLARK, *supra* note 128, at 293-94.

139. *Compare End of the Year*, *The Harrison Telegraph*, May 16, 1821, at 3, col. 1 (end of first year of publication) with *The Harrison Telegraph*, May 29, 1824, at 3, col. 1 (after July 3, 1824 issue editorship will be transferred to David Christy).

140. *Notice*, *The Harrison Telegraph*, Dec. 31, 1825, at 1, col. 1 (notice by William Tingley, administrator of Joseph Tingley estate). Though perhaps not as strident, antislavery material continued to be published under the new editor. See, e.g., *For the Telegraph*, *The Harrison Telegraph*, Nov. 13, 1824, at 3, col. 1 (a forceful letter against slavery and in support of repealing Ohio Law prohibiting black men from testifying, signed "Equal Rights").

141. *Hayti*, *The Harrison Telegraph*, Oct. 15, 1823, at 1, col. 2 (reprinting article from *Niles Weekly Register*); *The Harrison Telegraph*, Sept. 10, 1823, at 3, col. 1; *St. Domingo*, *The Harrison Telegraph*, Feb. 27, 1822, at 3, col. 3.

printed articles highlighting the evils of slavery.¹⁴² When Benjamin Lundy began publishing *The Genius of Universal Emancipation*,¹⁴³ Tingley obtained one of the first issues, reprinted an essay from it concerning the Fourth of July and the implications for blacks, and informed his readership that they could come to *The Harrison Telegraph*'s office to subscribe to the new publication.¹⁴⁴ Subsequently, *The Harrison Telegraph* published other articles concerning race relations from the *The Genius of Universal Emancipation*.¹⁴⁵

As the editor of *The Harrison Telegraph*, Joseph Tingley reprinted a letter from "A Friend of Equal Rights" advocating the repeal of laws prohibiting blacks from testifying in courts where either party was white.¹⁴⁶ After re-printing an article concerning newspapers that refused to print advertisements for runaway slaves, Tingley added: "No advertisements of this kind have ever appeared in the Harrison Telegraph—and, we trust, never will."¹⁴⁷ In one of his first political editorials, Tingley disapproved of Pitts-

142. *Selected Poetry, The Negroes' Lament for Mungo Park*, *The Harrison Telegraph*, May 8, 1824, at 2, col. 1; *The Infernal Trade*, *The Harrison Telegraph*, Oct. 29, 1823, at 1, col. 3 (British efforts to suppress the slave trade); *Young Negroes for Sale*, *The Harrison Telegraph*, Jan. 31, 1823, at 2; *Slavery*, *The Harrison Telegraph*, Oct. 18, 1821, at 3, col. 1 (status of free blacks in Ohio); *The Slave Trade*, *The Harrison Telegraph*, Oct. 18, 1821, at 3, col. 1; *Effects of Slavery*, *The Harrison Telegraph*, Sept. 19, 1821, at 3, col. 2; *Slavery v. Liberty*, *The Harrison Telegraph*, May 30, 1821, at 4, col. 4; *Manumission of Slaves*, *The Harrison Telegraph*, May 30, 1821, at 3, col. 3; *Liberation!*, *The Harrison Telegraph*, May 23, 1821, at 3, col. 3; *South Carolina Law*, *The Harrison Telegraph*, Apr. 18, 1821, at 2, col. 4 (forbidding ministers to teach slaves to read).

143. B. LUNDY, *THE GENUS OF UNIVERSAL EMANCIPATION*, 1821-1839 (available at the Library of Congress, Washington, D.C.). This paper was founded by Benjamin Lundy in 1821 to advance the antislavery cause. *THE COLUMBIA ENCYCLOPEDIA* 1256 (W. Bridgewater & S. Kurtz ed. 1967).

144. *The Harrison Telegraph*, July 18, 1821, at 3, col. 1.

145. *Anecdote*, *The Harrison Telegraph*, Feb. 6, 1822, at 1, col. 1 (concerning a black man who asked a magistrate, known to believe blacks were inferior, to perform his wedding ceremony and agreeing to pay him if he performed the ceremony exactly the same as it was performed for whites; however, the magistrate was not paid because he failed to kiss the bride as was his custom at white weddings); *Black List*, *The Harrison Telegraph*, Sept. 20, 1821, at 1, col. 2.

146. *The Harrison Telegraph*, Oct. 29, 1823, at 3, col. 2. This letter was in response to a *Notice* indicating that petitions would be presented to the legislature to repeal laws prohibiting the testimony of "black and mulatto persons" and asking that the same be reprinted by printers "friendly" to that effort. *Notice*, *The Harrison Telegraph*, Oct. 30, 1824, at 4, col. 3; see also *For The Harrison Telegraph*, *The Harrison Telegraph*, Sept. 17, 1823, at 3, col. 1 (by Amana). This letter indicates that the state representative running for reelection was said to have voted for a resolution to give blacks and mulatto men "all the privileges of free" whites in the state. The author indicates that this is untrue—that the representative merely had voted in favor of allowing such persons to testify if they could "prove by the testimony of two respectable white persons" that their character for truth and veracity was "as good as that of men in general." The author defended this vote upon the merits and said that it was to the representative's "eternal honor" that he had voted the way he did. *Id.*

147. *The Harrison Telegraph*, Aug. 15, 1821, at 3, col. 4.

burgh Congressman Henry Baldwin's conduct in support of slave interests.¹⁴⁸ In the course of that editorial, he referred to the Missouri Compromise as "a mere *bravado* against the Constitution of the U[nited] States, and an insult on its dignity."¹⁴⁹

In the 1824 election, Joseph Tingley consistently opposed Henry Clay in his newspaper. He inferentially identified Clay as one "known to be favorable to the extension of slavery"¹⁵⁰ and reprinted letters that opposed Clay upon the grounds that Clay was a slaveholder and had supported the Missouri Compromise.¹⁵¹ He printed the resolutions of the Ohio Legislature indicating that the legislature would support John Quincy Adams for president because he was a candidate "opposed to the slave holding policy."¹⁵² In his own endorsement, he indicated that Adams was "the only person known to be a candidate who is unconnected with, and of course uninfluenced by, the *slaveholding* interest."¹⁵³

As summarized by one of his nephew's biographers, Joseph Tingley favored Adams because "slavery [was] inconsistent with American principles of 'liberty, freedom, justice and equality' and . . . Mr. Adams was to be favor[ed] for the Presidency (even though he was not a western man), because he had never been connected either with slavery or with dueling."¹⁵⁴

A second of Bishop Simpson's maternal uncles, William Tingley, was apparently well known to Bingham.¹⁵⁵ He served as the county recorder from

148. The Harrison Telegraph, Apr. 4, 1821, at 3, col. 2. Baldwin resigned from Congress in 1822. He was appointed Associate Justice of the United States Supreme Court in 1830, where he served until his death in 1844.

149. *Id.* (emphasis in original).

150. The Harrison Telegraph, Apr. 17, 1824, at 3, col. 1.

151. *For The Harrison Telegraph*, The Harrison Telegraph, Mar. 27, 1824, at 4, col. 3; *For The Harrison Telegraph*, The Harrison Telegraph, Feb. 21, 1824, at 3, col. 3.

152. *Electoral Notice*, The Harrison Telegraph, May 8, 1824, at 3, col. 2.

153. The Harrison Telegraph, Mar. 13, 1824, at 3, col. 1 (emphasis added); *see also* Tingley, *Valedictory*, The Harrison Telegraph, July 3, 1824, at 3, col. 1 (where Tingley says he would have preferred a western man, but the slavery issue was more important). After indicating that the people of the United States liked to claim that they were the most enlightened and liberal people in the world, he stated:

I should rejoice in assisting to maintain that character, by placing a man in the presidential chair, whose personal estate is unconnected with the article of human flesh. . . . [A]ll of them except Mr. Adams are actual slaveholders; and the man who lives in the daily practice of a thing which he acknowledges to be wrong, not only condemns his own conduct, but exhibits strong marks of insincerity.

Id.

154. R. CLARK, *supra* note 128, at 8. Wood indicated that Bishop Matthew Simpson wrote some of the editorials for the paper. E. WOOD, *supra* note 120, at 30.

155. Tingley is identified as a school teacher by one of Simpson's biographer's. E. WOOD, *supra* note 120, at 25. Because Bingham lived in Cadiz from 1827 to 1830, and was said to

1814 until 1829,¹⁵⁶ as one of three directors of the local school district,¹⁵⁷ and as one of three vice presidents of the Harrison County Temperance Society.¹⁵⁸ In 1839, William Tingley was supported by many as the Whig candidate for the Ohio House of Representatives,¹⁵⁹ but withdrew his name as a candidate in that race.¹⁶⁰ He supported William Henry Harrison for President in 1840 and presided over many meetings held on Harrison's behalf.¹⁶¹

More importantly, he was also the clerk of courts from 1815 until 1838.¹⁶² In the latter position, William Tingley undoubtedly had frequent contacts with John Bingham's uncle, Thomas Bingham, who was a Court of Common Pleas Judge from 1825 to 1839.¹⁶³ Thomas Bingham and William Tingley lived in the same town, worked in the same court house, were members of the same party, and were also involved in joint political activities.¹⁶⁴ With the court house being the place of "entertainment" in those days and its location being "only across the street from the uncle's store," it is natural to expect that John Bingham found himself there "often"¹⁶⁵ and to assume that he too had frequent contact with Tingley. Tingley joined William Lloyd Garrison's then radical American Anti-Slavery Society in 1834.¹⁶⁶

Matthew Simpson, another uncle of Bishop Matthew Simpson, was also

have attended the local schools, it is possible that William Tingley was one of Bingham's teachers.

156. C. HANNA, *supra* note 99, at 112.

157. *School District Meeting*, The Organ, May 9, 1839, at 4, col. 5; *School District Meeting*, The Organ, Mar. 14, 1839, at 3, col. 4.

158. *Proceedings of the Harrison County Temperance Society*, The Harrison Telegraph, Dec. 8, 1832, at 3, col. 1.

159. *E.g.*, The Organ, Aug. 8, 1839, at 3, col. 1.

160. The Organ, Aug. 29, 1839, at 3, col. 1.

161. *E.g.*, *Harrison County Meeting*, The Organ, Mar. 19, 1840, at 3, col. 2; *Democratic Harrison Meeting*, The Organ, Jan. 9, 1840, at 3, col. 2; *Tippicanoe Meeting*, The Organ, Dec. 26, 1839, at 3, col. 2.

162. C. HANNA, *supra* note 99, at 112. Though the Ohio Constitution of 1802 had several sections pertaining to qualifications and ineligibility to hold office, OHIO CONST. of 1802, art. I, §§ 4, 7, 20, 26, 27 (1808), reprinted in 7 SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS 477 (1978); see also *id.* art. II, §§ 3, 13; *id.* art. III, § 8, none of those would have prohibited the clerk of courts from also holding a position as county recorder. Tingley was also active in local church affairs. He was one of the incorporators and Trustees of the Methodist Episcopal Church of Cadiz. 1835 Ohio Laws (local) 4.

163. See C. HANNA, *supra* note 99, at 109.

164. They were both delegates to the 1840 State Convention of the Whig Party. The Organ, Jan. 16, 1840, at 3, col. 4. They were two of twenty-one signatories to a letter seeking information to vindicate a man apparently maligned by the *Democratic Sentinel*. The letter was reprinted in the local Whig paper. *To the Public*, The Organ, June 4, 1840, at 4, col. 3.

165. W. SHOTWELL, *supra* note 99, at 176-77.

166. R. CLARK, *supra* note 128, at 53. The name "Tingley" is mentioned as one having to taken part in a discussion of the Cadiz Antislavery Society in 1840. *E.g.*, *Proceedings of the Harrison County Anti-Slavery Society*, The Organ, Jan. 30, 1840, at 4, col. 3.

prominent in Cadiz affairs, having served as an Associate Common Pleas Judge from 1818 to 1819¹⁶⁷ and as a state senator from 1816 to 1820 and again from 1822 to 1828.¹⁶⁸ Matthew Simpson was closely identified with Franklin College, which was a strong antislavery institution.¹⁶⁹ He was one of the college's incorporators¹⁷⁰ and one of the early trustees.¹⁷¹ While a member of the state legislature,¹⁷² he sponsored a bill to change the original name of Alma College to Franklin College.¹⁷³

The elder Matthew Simpson was personally known to John Bingham.¹⁷⁴ Indeed, Bingham was termed "his old friend" to whom he wrote in 1865 when the elder Matthew Simpson was ninety years old.¹⁷⁵

The elder Matthew Simpson was described as "one of the early abolitionists."¹⁷⁶ In 1834 he, too, joined the newly organized Cadiz branch of Garrison's American Anti-Slavery Society.¹⁷⁷ In a letter to his nephew that same

167. C. HANNA, *supra* note 99, at 109.

168. *Id.* at 110. Simpson was also one of the original trustees of the Methodist Episcopal Church of Cadiz, 1835 Ohio Laws (local) 4, and a Secretary of the Harrison County Temperance Society, *Proceedings of the Harrison County Temperance Society*, The Harrison Telegraph, Dec. 8, 1832, at 3, col. 1.

169. *See infra* notes 208-41 and accompanying text.

170. According to Professor Beauregard, Reverend Walker had founded Alma Academy in New Athens. He was motivated in part because of some antiabolition sentiment in Cadiz. Professor Beauregard suggests that the legislature determined that it would only authorize one college in Harrison County and that, simultaneously with Walker's request, an application on the Board of Trustees of Cadiz Academy for incorporation as Cadiz College was being considered. Though Alma's success was attributed to Walker's lobbying, the fact that the senator from Harrison would have supported the abolitionist Alma College, over Cadiz College, which was located in his hometown, is significant. E. BEAUREGARD, *OLD FRANKLIN THE ETERNAL TOUCH, A HISTORY OF FRANKLIN COLLEGE, NEW ATHENS, HARRISON COUNTY, OHIO* 6-7 (1983). The elder Simpson was also one of Alma College's incorporators. *See* 1826 Ohio Laws 49.

171. REPORT OF PROCEEDINGS OF THE SEMI-CENTENNIAL CELEBRATION OF FRANKLIN COLLEGE, NEW ATHENS, HARRISON COUNTY, OHIO 6 (1875) [hereinafter REPORT] (available at Ohio Historical Society, Columbus, Ohio) (Address by A.F. Ross, Franklin College President, Franklin College Semi-Centennial Celebration (June 23, 1875)).

172. C. HANNA, *supra* note 99, at 109.

173. The Harrison Telegraph, Jan. 7, 1826, at 3, col. 1; *see also* 1826 Ohio Laws 49.

174. In one of Bishop Simpson's biographies, Bingham is named as one who knew the elder Simpson's character. G. CROOKS, *supra* note 126, at 56. Bingham referred to him as "Uncle Matthew." The term "Uncle" may have been a means of distinguishing the two men with identical names or it may have been a term of endearment. The more important point is that Bingham was in a position to make an assessment of his character.

It is possible that the elder Matthew Simpson was also one of Bingham's teachers since he opened a "select school" in approximately 1826. *Id.* at 18. Bishop Matthew Simpson assisted his uncle in teaching until he left for college in 1828. *Id.*; *see also* R. CLARK, *supra* note 128, at 6 (referring to this as a "common school").

175. G. CROOKS, *supra* note 126, at 55.

176. *Id.* at 259.

177. R. CLARK, *supra* note 128, at 53.

year, Simpson indicated that he had recently read "Garrison's book against the Colonization Society."¹⁷⁸ While indicating that he was not convinced that the Society was "doing evil," the elder Simpson nevertheless concluded that a "great injustice" was being done to free blacks in suggesting that they were so beyond improvement that they must be sent from the country.¹⁷⁹ While indicating that it was "imprudent"¹⁸⁰ for Garrison to advocate "equal privileges and amalgamation," he also emphasized that blacks must better their condition "wherever they are" and that arguments to the contrary were "inconsistent with the character of Americans and Christians."¹⁸¹ In 1838, the elder Simpson described slavery as "the most abominable institution that ever disgraced humanity whether in Christian or heathen countries."¹⁸²

Antislavery sentiment in Harrison County was strong. It has been suggested that in 1836 the membership of Harrison County's five antislavery societies constituted ten percent of Cadiz's population and three percent of the county's population.¹⁸³ This data led one scholar, who was not sympathetic to the abolitionists or to Bingham's efforts which he felt helped bring about an unnecessary civil war, to conclude: "[T]he number of active participants in the anti-slavery movement bore a relatively large proportion to the total population. . . . Cadiz was in a strong anti-slavery, even abolition minded, territory from at least the year 1820."¹⁸⁴

It should be emphasized that the people involved in the antislavery movement were not, as in some other communities, social outcasts.¹⁸⁵ Rather, they appear to have been some of the leaders of the community whose anti-

178. Letter from Matthew Simpson to his nephew, Matthew Simpson (Aug. 20, 1834) (available in the Simpson Papers, Library of Congress, Washington, D.C.).

179. *Id.*

180. *Id.*

181. *Id.*

182. Letter from Matthew Simpson to his nephew, Matthew Simpson (Mar. 2, 1838) (available in the Simpson Papers, Library of Congress, Washington, D.C.), *quoted in* J. Kirby, *The Ecclesiastical and Social Thought of Matthew Simpson* 209-10 (1963) (doctoral dissertation, Drew Univ., Madison, N.J.) (available at the Library of Congress, Washington, D.C.).

183. B. Hasin, *supra* note 12, at 16 & n.20.

184. C. Riggs, *supra* note 12, at 12 n.31.

185. At the same time, there is evidence to indicate that there were also strong sentiments opposed to abolitionists. An issue of the Cadiz *Organ* contains a resolution by the Antislavery Society against an action of the county commissioners to prohibit the Colonization Society and the Antislavery Society from using the town courthouse after dark for meetings. *Resolutions Respecting the Co. Commissioners*, *The Organ*, Jan. 30, 1840, at 4, col. 4. The resolutions indicate that no one opposed the Colonization Society and, therefore, the action was really aimed at the Antislavery Society. Reference is made to "mobs" and the conduct of the commissioners is said to exhibit "the spirit of cowardice, unbecoming American officers, to yield to lawless mobs, and to be deterred by their threats, from the protection of citizens in their lawful assemblies." *Id.* Similarly, it is said that Franklin College was founded in New Athens because of the antiabolitionist sentiment in Cadiz. E. BEAUREGARD, *supra* note 170, at 6.

slavery involvement was widely known. This included, of course, Joseph Tingley, William Tingley, and the elder Matthew Simpson.

The lives of others are also illustrative. For example, A.F. Hanna was listed as the signer of the public notice calling a meeting of all the Harrison County abolitionist societies for the purpose of reorganizing the Harrison County Abolitionist Society.¹⁸⁶ His name frequently appeared, as "Sec'y" on notices announcing abolitionist meetings.¹⁸⁷ Contemporaneous with these events, Hanna also served as the clerk of the school district¹⁸⁸ and as the recorder for Cadiz.¹⁸⁹ In 1840 he was listed, along with Josiah Scott, as one of several references for a new school to be opened by James R. Doig.¹⁹⁰

Similarly, Issac Lewis was the secretary of the antislavery society in Georgetown, Harrison County.¹⁹¹ Issac and his brother Thomas were attorneys.¹⁹² At the same time Lewis served in this capacity, he was also appointed as one of a committee of three by the citizens of Belmont, Jefferson, and Harrison Counties to publicize information to the citizens about a proposal to construct a turnpike.¹⁹³ He was subsequently appointed as a member of a committee to raise stock subscriptions for that endeavor.¹⁹⁴

Some idea of the sentiment in Cadiz concerning slavery can be gleaned by the materials published in its newspapers. This is true not only because it reflected the newspaper's attitude, but also because many of the materials came from people living in the community.

For example, *The Organ* was a Whig newspaper published in the late 1830's and early 1840's. It carried announcements of meetings of both the Cadiz Female Antislavery Society and the Cadiz Male Antislavery Soci-

186. *County Abolition Meeting*, *The Organ*, June 20, 1839, at 3, col. 6. It may be noteworthy that this meeting was held in the courthouse rather than in some private building. See, e.g., *Abolition Meeting*, *The Organ*, Apr. 23, 1840, at 3, col. 6. But see *supra* note 185.

187. E.g., *The Organ*, Nov. 7, 1839, at 2, col. 6.

188. E.g., *School District Meeting*, *The Organ*, May 9, 1839, at 4, col. 5. It is noteworthy that William Tingley was a member of the board of directors and that Hanna was the clerk. However, the notice of this meeting refers to educating the "white youth" of the district. It is not known whether this was a result of their choice, a political compromise Tingley made with two other board members, or an assessment of the political sentiment in the community. It does suggest, however, that one should be cautious in extrapolating the values upon all issues concerning race based upon those known about a few.

189. E.g., *An Ordinance to Provide*, *The Organ*, Aug. 1, 1839, at 3, col. 1; *An Ordinance to Provide*, *The Organ*, July 25, 1839, at 3, col. 2.

190. *Select School*, *The Organ*, Apr. 9, 1840, at 3, col. 6.

191. *The Organ*, May 16, 1839, at 3, col. 2; see also Lewis, *A Special Meeting*, *The Organ*, Apr. 30, 1840, at 3, col. 6.

192. *To All Whom It May Concern*, *The Organ*, July 11, 1839, at 2, col. 5.

193. *Turnpike Meeting*, *The Organ*, May 16, 1839, at 3, col. 2.

194. *Turnpike Meeting*, *The Organ*, June 6, 1839, at 3, col. 2.

ety.¹⁹⁵ A frequently run advertisement for the store of Hanna and Bebee featured antislavery books.¹⁹⁶ The front page of one issue of *The Organ* contained a poetry section, featuring a poem by John Greenleaf Whittier protesting the United States Senate's passage of a bill to prohibit abolitionist papers from going through the United States mail.¹⁹⁷ *The Organ* also published antislavery news¹⁹⁸ and letters from abolitionists.¹⁹⁹

This same policy was pursued by a later Whig paper, *The Cadiz Republican*. That publication also furnished its readers with samples of antislavery arguments and materials.²⁰⁰ Furthermore, it published an antislavery article even when it went against its own views by advocating adherence to third parties.²⁰¹ Opposition to slavery and third parties was apparent in its editorial pages. It referred to the annexation of Texas as the "Project of the Slaveholders."²⁰² It indicated that the result of Texas' annexation was not only the probability of war but also "[s]lavery extended and perpetuated, and possibly the dissolution of the Union!"²⁰³ Blame for this result was placed upon the New York abolitionist vote that defeated Clay. *The Cadiz Republican* argued that the annexation would not only endanger peace but "[t]hat it [would] give a mortal check to the spread of our free, social, moral, and political blessings, as well as blight the hopes of the oppressed."²⁰⁴

195. Taggart, *Antislavery Notice*, *The Organ*, Apr. 23, 1840, at 3, col. 6; *Abolition Meeting*, *The Organ*, Apr. 23, 1840, at 3, col. 6.

196. *Books for Sale*, *The Organ*, Oct. 31, 1839, at 3, col. 5 (titles included: *Emancipation in the West Indies*, *A Slavery Catechism*, *Liberty*, *Slavery As It is*, *Anti-Slavery*).

197. *Lines*, *The Organ*, Mar. 14, 1839, at 1, col. 1. With only slight changes, this same poem with the title *A Summons* appears in *THE COMPLETE POETICAL WORKS OF JOHN GREENLEAF WHITTIER* 272 (Student's Cambridge ed. 1894).

198. *The Bloodhound Soldiers*, *The Organ*, Mar. 19, 1840, at 4, col. 2 (providing the text of John Quincy Adams' resolution requesting information concerning the military qualities of the bloodhounds that were being used against Florida's blacks and Indians; their ability to distinguish between warriors and women and children; whether they would receive military pensions; etc.); see also *The Blood-Hound War!*, *The Organ*, Jan. 30, 1840, at 3, col. 4.

199. E.g., "An Abolitionist," *The Organ*, Feb. 20, 1840, at 3, col. 2; *The Organ*, Feb. 13, 1840, at 3, col. 4.

200. *Abolition Movements*, *The Cadiz Republican*, Oct. 2, 1845, at 1, col. 6.

201. *Abby Kelley and S.S. Foster*, *The Cadiz Republican*, Oct. 2, 1845, at 2, col. 1 (signed "Abolitionist").

202. *Annexation of Texas*, *The Cadiz Republican*, Mar. 20, 1845, at 2, col. 2.

203. *Id.* at 2, col. 3.

204. *Id.* The same page carries a story entitled *Negroism*. The argument was that because of the three-fifths clause of the Constitution, the white leaders of Texas would be able to send representatives for the nonvoting blacks which would allow the black people, in effect, to govern the North. This appeal to racial prejudice appears to be unique to the *Republican* and did not appear in either *The Organ* or *The Telegraph*.

III. EDUCATION

Much remains unknown of Bingham's early education. It is said that he attended the "common school" in Mercer, Pennsylvania.²⁰⁵ At age twelve he attended the "local school" in Cadiz, Ohio while residing with his uncle.²⁰⁶ Subsequently, he returned to Mercer, at the age of fourteen, where he attended Mercer Academy.²⁰⁷

Although these facts imply nothing about Bingham's political beliefs, the same is not true of his college education. In 1835, after spending two years as an apprentice for the anti-Masonic *Luminary*, Bingham returned to Ohio to attend Franklin College in New Athens, six miles from his uncle's home in Cadiz.²⁰⁸ It was here that he received an education from those he later referred to as his "venerated instructors."²⁰⁹

This college was described as "the fountain-head of the abolition sentiment of eastern Ohio."²¹⁰ The "leading spirit" of the college was Rev. John Walker²¹¹ who had been minister of the Cadiz Associate Congregation

205. M. Brichford, *supra* note 12, at 2.

206. W. SHOTWELL, *supra* note 99, at 178. At this time it appeared that free, public schools had replaced the older "subscription schools." Among those who are said to have been school teachers was William Tingley, an uncle of Bishop Matthew Simpson. G. CROOKS, *supra* note 126, at 2.

207. This was a school which received state appropriations and which charged a moderate tuition. For an explanation of the nature of the 19th century "academy," see S. STEVENS, PENNSYLVANIA, BIRTHPLACE OF A NATION 128-29 (1964). For details on Mercer Academy itself, see J. WHITE, A TWENTIETH CENTURY HISTORY OF MERCER COUNTY, PENNSYLVANIA 93-94 (1909). For a brief summary of Bingham's studies there, see W. SHOTWELL, *supra* note 99, at 178. In 1823, Hugh Bingham, John's father, was the secretary of the Board of Trustees of the Academy. See *Notice*, The Western Press, Oct. 28, 1823, at 3, col. 3 (advertising for a teacher in the areas of English and Math and announcing the commencement of the "LATIN and GREEK SCHOOL" for the fall term).

208. W. SHOTWELL, *supra* note 99, at 178-79.

209. Address by John Bingham, Delivered Before the Literary Societies of Franklin College (Sept. 23, 1851) [hereinafter Bingham Address] (a copy of the address is available at the Western Reserve Historical Society, Cleveland, Ohio).

210. C. HANNA, *supra* note 99, at 137 (quoting Hunter, *Pathfinders of Jefferson County*, 8 OHIO ARCHAEOLOGICAL & HIST. Q. (1900)).

211. Hunter, *supra* note 118, at 136 n.2 (quoting Address by A.F. Ross, Franklin College President, Franklin College Semi-Centennial Celebration (June 23, 1875)) (available at Ohio Historical Society, Columbus, Ohio).

This speech is reprinted in REPORT, *supra* note 171, at 5-17. Though Ross did not become the college's president until April 11, 1871, *id.* at 16, he had attended the college as a student, apparently graduating in 1836. In the fall of 1837, he was chosen Franklin's third full-time professor, and its first regular professor of languages. *Id.* at 9. He apparently resigned from the faculty in 1840, along with the president and the only other faculty member "in discouragement in regard to [the] prospects" of the college. *Id.* at 12.

Reverend Walker had been President of the Board of Alma Academy, a predecessor of the college. See The Harrison Telegraph, Aug. 22, 1821, at 3, col. 4. Reverend Walker was one of

Church from 1814 to 1820.²¹² Walker was said to have been the leader of the local underground railroad and an advocate of the "anti-slavery doctrine in its most ultra-secessionist form."²¹³ Reverend Walker and Rev. Jacob Coon, who was a member of the college's board of trustees during Bingham's education, had both been leaders in the organization of the Ohio Anti-Slavery Society in 1835.²¹⁴ In 1875, Walker was described by the President of Franklin College as: "a man of deep convictions upon the subject of equal rights, and common justice to all mankind. Hence he entered into the Anti-

the incorporators of the college which was originally known as Alma College. 1825 Ohio Laws 22. The name was changed to Franklin College a year later. 1826 Ohio Laws 49.

Nevertheless, one should be careful not to overstate Walker's influence. For example, it is said that he opposed changing the name of the college from Alma to Franklin. The reasons for this opposition were said to be Benjamin Franklin's moral weakness in failing to introduce a resolution against the slave trade at the constitutional convention as requested by the Pennsylvania Abolition Society and Walker's belief that Franklin had "professed both deism and Freemasonry." See E. BEAUREGARD, *supra* note 170, at 13. He was, however, unsuccessful in his endeavor to prevent the name change.

212. C. Riggs, *supra* note 12, at 5. Reverend Walker was also said to have been "a minister of the secession church." Hunter, *supra* note 118, at 186, 187; *Report*, *supra* note 170, at 5. Others refer to him as a member of the Associate Presbyterian Church. E. BEAUREGARD, *supra* note 170, at 8. Others associated with the college were described as Presbyterians or members of the Associate Reform Church. Hunter, *supra* note 118, at 137-40 & n.2. Though Walker moved to New Athens, he continued to have contacts in Cadiz. For example, he was one of the six "solicitors" of the Harrison County Temperance Society, which met in Cadiz. The Harrison Telegraph, Dec. 8, 1821, at 3, col. 4.

213. C. HANNA, *supra* note 99, at 138. In *Driftwood*, Shotwell indicates that Walker was a minister of the United Presbyterian Church. W. SHOTWELL, *supra* note 99, at 188. The Associate Reformed Presbyterian Church of Cadiz and the Associate Congregation of Cadiz merged to form the United Presbyterian Church of Cadiz in 1858. C. HANNA, *supra* note 99, at 140, 145, 150-52 (quoting historical sermon of Rev. W.T. Meloy of Aug. 26, 1876). Shotwell also indicates that Walker was a "man of strong anti-slavery convictions" and that he maintained his home as one of the stations on the underground railroad. W. SHOTWELL, *supra* note 99, at 188. In 1840, Reverend Walker was Chairman of the Resolution's Committee of the Harrison County Antislavery Society. *Proceedings of the Harrison County Anti-Slavery Society*, The Organ, Jan. 30, 1840, at 4, col. 3. Among the resolutions adopted were those aimed at voting only for antislavery candidates, refusing to commune with slave holders in church, and securing "civil rights" for "every human being." *Id.*

214. Reverend Coon was described as an "ardent abolitionist," and as one who was "strongly Anti-Slavery in sentiment and feeling." *REPORT*, *supra* note 171, at 10. He is listed in the August 1839 *Catalogue* as a member of the faculty as Professor of Natural Philosophy and Perceptual Instruction. *Id.*

Reverend Coon was named president pro tempore in 1838. *Id.* at 11. Though Coon himself was strongly antislavery, his congregation was divided over "agitation" on the issue and the use of the pulpit to expound antislavery views. *Id.* at 10; see C. HANNA, *supra* note 99, at 135. President Smith opposed any division of the church and threatened to resign as president of the college if any division took place. *REPORT*, *supra* note 171, at 10. Nevertheless, Reverend Coon "left the congregation" and, along with the congregation's antislavery members, moved to New Athens and erected a new church. *Id.* As a result, Dr. Smith resigned in the fall of 1838. *Id.* at 10.

Slavery contest with all the ardor of his impetuous nature, and during that long controversy was one of the leading Anti-Slavery spirits of the West."²¹⁵

Walker was said to have implored his students "to slay the dragon slavery" and to have pressed such a message at the university chapel, at Unity Meeting House, and at his home with groups of students.²¹⁶ Franklin College's Board of Trustees were all antislavery men, though during Bingham's last year the president was said to have been opposed to "agitation" on the issue.²¹⁷ Nevertheless, in the spring of 1837, Bingham's second and last year at Franklin College, the school ran an advertisement for students in Birney's *Philanthropist*,²¹⁸ hardly a publication with which to be associated if one were concerned about Franklin being called an abolitionist institution. One point of the advertisement was to assure students that "agitation" upon the slavery issue was not suppressed at Franklin College: "Free discussion on all subjects is allowed in [the two literary societies], and in college, but no preference is shown to any student on the ground of either his religion or other opinions. . . ."²¹⁹

Reverend Walker's effect upon Franklin College was demonstrated in the struggle with antislavery agitation the year after Bingham left the institution. Though the newly appointed president, Rev. Joseph Smith, sought to keep the college from being "compromised" through involvement with this issue, "with the influence of the Rev. John Walker, both in the College, of which he was then Vice-president, and in the community, this was impossible. The young men of the College . . . became ardent partisans on one side or the other. . . ."²²⁰

215. REPORT, *supra* note 171, at 6. President Ross indicated that Walker was "[s]incere in the convictions of right and duty, and zealous and able in the advocacy of his principles." *Id.* Hanna indicates that Walker was "intensely bitter in his hostility to slavery" and that he "was already ready, even anxious, to defend his views, and oppose what he regarded as error." C. HANNA, *supra* note 99, at 133. It may be noteworthy that Reverend Walker was also "very decided in his opposition to Free Masonry." *Id.*

216. E. BEAUREGARD, *supra* note 170, at 16.

217. *Id.* at 135; see also Beauregard, *Franklin College: The First Quarter Century of An Eminent College*, 5 THE OLD NORTHWEST 45, 47 (1979) (indicating that President Smith was in favor of "a gradual solution . . . , including colonization in Africa").

According to Andrew Ross, apparently speaking for the board of trustees in 1838-1839 when he was a member of the faculty, "the majority of the Board, at least the more active and influential part of it, was composed of Anti-Slavery men. But it was not their purpose then to commit the College wholly to Anti-Slavery Principles." REPORT, *supra* note 171, at 11. Ross was a member of the Whig Party and served as secretary at a party meeting in New Athens. *Whig Meeting in New Athens*, The Organ, Jan. 16, 1840, at 3, col. 1.

218. Graham, *supra* note 72, at 624 n.150 (quoting *Philanthropist*, Apr. 28, 1837, at 3, col. 5).

219. *Id.* (quoting *Philanthropist*, Apr. 28, 1837, at 3, col. 5).

220. REPORT, *supra* note 171, at 10. Walker apparently lived in New Athens where the college was located. See The Harrison Telegraph, Oct. 22, 1823, at 3, col. 4 (giving an account

Indeed, the entire Cadiz and New Athens region "was noted for its warmth of abolition sentiment from 1820" onward.²²¹ Its position was "abolition of slavery, pure and simple".²²² "[T]he hard-headed, austere Seceders, the followers of Dr. John Walker . . . would tolerate no compromise, and they looked upon Benjamin Lundy's colonization schemes with almost the same disrespect that they would consider any half-way measure proposed by pro-slavery advocates. . . ." ²²³

By 1840, three years after Bingham left Franklin College,²²⁴ the college's board of trustees "resolved to throw themselves entirely upon the side of the anti-slavery sentiment of the country."²²⁵ One biographer, whose father knew Bingham well, characterized the church affiliated with Franklin College as "the most pronounced of all churches in opposition to the spread of

of a fire at his new home). Walker also took an active part in recruiting students. According to Reverend Meloy, Walker "would have gone forty miles on horse or foot to secure a student for [Franklin]." C. HANNA, *supra* note 99, at 147.

The nature of the dispute may be somewhat distorted by some of the terms used. For example, even in 1875 President Ross spoke of the rival "Pro-Slavery" party which set up a new institution in New Athens. Yet it is clear that this group was not actually advocating slavery or supporting its existence in the South. Rather, this group appears to have been a more conservative one supporting colonization of former slaves abroad, such as the experiment in Liberia. See REPORT, *supra* note 171, at 13. See generally E. BEAUREGARD, *supra* note 170, at 25-46 (referring to the opposition group as "anti-abolitionists, i.e., the gradualists").

221. Hunter, *supra* note 118, at 185-86.

222. *Id.* at 186.

223. *Id.* Though it was not without controversy, as early as 1839 the Congregational Church of Cadiz adopted the following:

Resolved, That all members of the Secession Church who approve of a resolution passed at a political meeting, held in Cadiz on the 15th day of May, A. D., 1839, approving of the course pursued by the State and National administration on the subject of abolition, are guilty of a breach of the moral law and the principles of the Secession Church.

C. HANNA, *supra* note 99, at 149 (emphasis added).

224. Bingham did not complete his course of study at Franklin College. THE BIOGRAPHICAL DICTIONARY OF THE AMERICAN CONGRESS 1774-1971, at 593 (1971) indicates simply that he "attended" Franklin College. A local history published while he was living in Cadiz and some nine years before his death indicates that "poor health prevented him from advancing to graduation." COMMEMORATIVE RECORD, *supra* note 11, at 9. This same account is given in the obituary most cited, The Cleveland Leader, Mar. 20, 1900, at 1, col. 3, and is often repeated in short biographical sketches. Historian Erving E. Beauregard of the University of Dayton indicates that Bingham left Franklin College in March of 1837 because of typhoid fever and that a degree was conferred upon him by Franklin's Board of Trustees in 1867. Letter from Professor Erving E. Beauregard to Richard L. Aynes (Apr. 4, 1987).

225. C. HANNA, *supra* note 99, at 139 n.2. By this time Franklin had come to be regarded as "the hot-bed of Abolitionism in Eastern Ohio." REPORT, *supra* note 171, at 12. Professor Coon became president pro tempore, Professor of National Philosophy and Perceptual Instructor. When his successor was pressed to "make a firm commitment to abolition" he quit. His successor, Rev. Edwin Henry Nevin was said to have "Championed abolition." Beauregard, *supra* note 217, at 48.

slavery."²²⁶ Because Franklin College shared that "sentiment," Bingham "was well-grounded in this [antislavery] faith, and well sustained by his surroundings."²²⁷

One indication of the racial attitudes at Franklin College is suggested by the fact that Titus Basfield, a former slave, was enrolled in the college on October 28, 1833.²²⁸ During his enrollment he lived, without cost, in the home of Rev. John Walker.²²⁹ Basfield became the first black person to receive a degree from an Ohio institution of higher learning on September 27, 1837.²³⁰ Bingham had begun his studies at Franklin in 1835 and was still in

226. W. SHOTWELL, *supra* note 99, at 187-88. Judge Shotwell was also intimately connected with Franklin College. His father, S.B. Shotwell, was one of its graduates and a member of its board of trustees. REPORT, *supra* note 171, at 1. The 1839 catalogue listed him as a sophomore. William Shotwell—probably another relative—was listed as a member of the preparatory department for that same year. CATALOGUE OF OFFICERS AND STUDENTS OF FRANKLIN COLLEGE, NEW ATHENS, OHIO 6-7 (1839) [hereinafter 1839 FRANKLIN COLLEGE CATALOGUE]. Judge Shotwell was a graduate of the college's class of 1877. The list of alumni also includes Martha B. Shotwell—probably a sister—who was the first woman to graduate from the classical program in 1875. CATALOGUE OF OFFICERS AND STUDENTS OF FRANKLIN COLLEGE, NEW ATHENS, OHIO 5-8 (1893) [hereinafter 1893 FRANKLIN COLLEGE CATALOGUE]. Ms. Shotwell is identified as "Miss Mattie B. Shotwell" and is said to have graduated with "highest honors." REPORT, *supra* note 171, at 1.

227. W. SHOTWELL, *supra* note 99, at 188. One additional aspect that may have also attracted Bingham to Franklin was Walker's hostility to secret societies, particularly the Freemasons. E. BEAUREGARD, *supra* note 170, at 16-17; *see also* Beauregard, *supra* note 217, at 45-47. Indeed, in the 1832 elections, Walker supported Willard Wirt for President and Darius Lyman for Governor of Ohio, both members of the Anti-Mason Party. E. BEAUREGARD, *supra* note 170, at 19.

228. T. BASFIELD, AN INTERESTING HISTORY OF THE LIFE OF THE REVEREND TITUS BASFIELD, A COLORED MINISTER IN THE ASSOCIATE PRESBYTERIAN CHURCH 24-25 (1858). This source was first brought to my attention by Professor Beauregard. E. BEAUREGARD, *supra* note 170, at 27 n.9. The significance of Basfield's accomplishments and the uniqueness of Bingham's attendance of an "integrated" college cannot be overstated. Carter G. Woodson, in his epic *The Education of the Negro Prior to 1861*, indicates that no black had "graduated from a college before 1828" and that available records suggest that no more than fifteen blacks were admitted to colleges before 1840. C. WOODSON, THE EDUCATION OF THE NEGRO PRIOR TO 1861 265 (1919). The rarity of black graduates at this time is suggested by the fact that there are only 28 known blacks who graduated from recognized colleges prior to 1860. L. LITWACK, NORTH OF SLAVERY 139 (1970) (citing C. JOHNSON, THE NEGRO COLLEGE GRADUATE (1938)).

As Dean J. Clay Smith, Jr. of Howard University School of Law has observed: "The fact that Bingham attended an integrated college may have influenced the strong abolitionist philosophy he later exhibited as a lawyer and as a United States Congressman responsible for drafting portions of the fourteenth amendment to the U.S. Constitution. Titus Basfield may have 'liberated' Bingham." Letter from Dean J. Clay Smith, Jr. to Richard L. Aynes (Nov. 10, 1987).

229. T. BASFIELD, *supra* note 228, at 25.

230. It should be noted that Basfield worked while he was going to college as a janitor and sexton of the Unity Meeting House. One cannot tell from Reverend Basfield's autobiography or Professor Beauregard's study whether or not it was common for students to work. Basfield

attendance in March of 1837.²³¹ Thus, had Bingham remained in school and graduated in September 1837, he would have been one of the eleven students who received his degree at the same time as Basfield.²³² Bingham and Basfield apparently became friends in college and corresponded for a period of over twenty-seven years, from at least 1848 until at least 1875.²³³ Both the example of Reverend Walker's relationship with Basfield and Bingham's own interracial experience cannot have been without influence upon him.

Bingham continued to have contacts with Franklin College long after his studies there ceased.²³⁴ In 1851 he returned to give the commencement speech to the graduating class.²³⁵ He may have served on the school's board of trustees because he was identified as one of four individuals who corresponded "on behalf of the Board" with Andrew F. Ross in 1870 about becoming the college's president.²³⁶ Sometime prior to Ross' 1871

went on to become a Reverend in the Associate Presbyterian Church. E. BEAUREGARD, *supra* note 170, at 27. In his autobiography, Basfield referred to Reverend Walker as "our beloved Mr. Walker who was to me a friend indeed." T. BASFIELD, *supra* note 228, at 74.

231. Letter from Professor Erving E. Beauregard to Richard L. Aynes, *supra* note 224. See Graham, "Built Better", *supra* note 24, at 541 n.24 (characterizing Franklin as an "abolitionist stronghold" and mistakenly indicating that Bingham attended Franklin from 1837-1839).

232. E. BEAUREGARD, *supra* note 170.

233. See Beauregard, *John A. Bingham and the 14th Amendment*, 50 THE HISTORIAN 67, 72 n.22 (citing J. Bingham to Basfield, New Philadelphia, Ohio (Sept. 29, 1848) (Lloyd E. Martin Collection, Portsmouth, Ohio); *id.* at 73 n.25 (J. Bingham to Basfield, Washington, D.C. (Feb. 2, 1865) (Martin Collection); *id.* at 75 n.31 (J. Bingham to Basfield, Washington, D.C. (Mar. 3, 1866) (Martin Collection); *id.* at 70 n.14 (J. Bingham to Basfield, Washington, D.C. (June 16, 1866) (Martin Collection); *id.* at 71 n.20 (J. Bingham to Basfield, Cadiz, Ohio (Aug. 2, 1868) (Martin Collection); *id.* at 69 n.13 (J. Bingham to Rev. Titus Basfield, Yeddo, Japan (Apr. 25, 1875) (Martin Collection).

234. John Bingham had a strong connection with Franklin College. Josiah Scott of Cadiz married one of the daughters of Uncle Thomas Bingham, with whom John had lived. This was the same Scott with whom Bingham had his first law partnership and with whom he jointly campaigned on behalf of the Whig Party in the early 1840's. Scott is listed as one of the members of the Board of Trustees of Franklin College in 1839. 1839 FRANKLIN COLLEGE CATALOGUE, *supra* note 226, at 2. The 1839 catalogue was the only catalogue published prior to the 1850's that this author could locate. It is located at the Ohio Historical Society, Columbus, Ohio. In the absence of other information, it is impossible to tell how long Scott was a member of the board.

Bingham's daughter Lucinda "Lucy" Stuart Bingham married the Rev. Samuel Robinson Frazier, who was pastor of the Tabernacle United Presbyterian Church in Youngstown, Ohio. The Cleveland Leader, Mar. 20, 1900, at 1, col. 3. See C. HANNA, *supra* note 99, at 464. Reverend Frazier was an alumnus of Franklin College. 1893 FRANKLIN COLLEGE CATALOGUE, *supra* note 226, at 8. Frazier went to Japan with Bingham and served as secretary of the Japanese Legation. *Id.* In 1875 he was elected secretary of the Franklin College Alumni Association. REPORT, *supra* note 171, at 1.

235. Bingham Address, *supra* note 209.

236. REPORT, *supra* note 171, at 16. Beauregard indicates that Bingham, along with Presi-

inauguration, Bingham had been appointed professor in International Law and Political Science at Franklin College.²³⁷ Upon Bingham's death, his photograph was presented to the college.²³⁸

Bingham's exposure to such abolitionist views at Franklin is significant. One author has concluded that "the classroom and the debating platform plus the uncompromising abolition stand of trustee and Vice President John Walker fashioned the mind of John A. Bingham."²³⁹ While this attributes too much weight to the influence of Franklin College and Reverend Walker, there is little doubt that both were influential in Bingham's development. Bingham himself is quoted as saying: "All that I have accomplished stemmed from my beloved alma mater and especially from the unparalleled Reverend John Walker."²⁴⁰ The fact that Bingham would choose a school with such well known abolitionist ties, and also that his uncle and father would agree to such a choice, suggests much about each man's position upon the question of slavery.²⁴¹

IV. CHURCH INFLUENCE

Bingham's mother was described as a "zealous Calvinist Presbyterian"²⁴² and his father was said to be an "elder,"²⁴³ in what one would assume was a Presbyterian church. One of Bingham's younger contemporaries indicated that Bingham was "identified" with the United Presbyterian Church that he "regularly" attended and of which his family were members.²⁴⁴ It was this

dent Campbell, The Reverend Dr. William M. Grimes, and Attorney Stuart B. Shotwell Sr., formed part of a committee which searched for a new president and the board accepted their recommendation. There is no indication as to whether any of these were board members or not. E. BEAUREGARD, *supra* note 170, at 91.

237. REPORT, *supra* note 171, at 16. No other standard reference indicates that Bingham taught at Franklin College. Dr. Ross refers to Bingham in listing the faculty at the school when Ross commenced his tenure as president. E. BEAUREGARD, *supra* note 170, at 89-90 indicates that Bingham became a professor at Franklin College in 1870. Beauregard reports that Bingham served on the faculty until 1873, at a salary of \$400, when he left to serve as United States Minister to Japan. *Id.* at 92-93.

238. H. MCCONNELL, CADIZ YEAR BY YEAR; GLEANINGS FROM *The Cadiz Republican* FILES, 1868-1940, at 37 (1940) (May 31, 1900): "A picture of the late John A. Bingham has been made by McConnell, the photographer, for Hon. J.J. Gill, to be presented to Franklin College.").

239. E. BEAUREGARD, *supra* note 170, at 202.

240. *Id.* at 208 (citing Campbell to Williams, Mar. 21, 1900).

241. Rev. John Walker was also undoubtedly well-known to Hugh Bingham, because Walker had "served as Pastor of Mercer and connections in Pennsylvania, until September 14, 1814." C. HANNA, *supra* note 99, at 133.

242. P. Dare, *supra* note 12, at 35.

243. B. Hasin, *supra* note 12, at 8.

244. W. SHOTWELL, *supra* note 99, at 187. Bingham's obituary states that he was a member of the United Presbyterian Church. *The Cadiz Republican*, Mar. 22, 1900, at 3, col. 3.

church that was said to have been "the most pronounced of all the churches in opposition to the spread of slavery."²⁴⁵ The Associate Presbyterian Church, to which Bingham's uncle, Thomas, belonged, was one of the "more radical adherents to the anti-slavery doctrine."²⁴⁶

In a highly religious era which was strong with revivalism, it is not unreasonable to assume that while John Bingham was living with his uncle, he also attended his church and was subjected to antislavery influences not only at home, but in church as well.²⁴⁷ This view seems to be reinforced by the selection of Franklin College as the place of Bingham's education, which was itself affiliated with the same religious groups and had the same pronounced antislavery views.²⁴⁸ Moreover, while at Franklin College, it is likely that Bingham was required to attend church services and, thus, received an anti-slavery education through three significant sources: the classroom, the literary societies, and the church.²⁴⁹

245. W. SHOTWELL, *supra* note 99, at 187-88.

246. C. Riggs, *supra* note 12, at 6 n.13 (citing R. O'Dell, *The Early Anti-Slavery Movement in Ohio* (1948) (unpublished doctoral dissertation, Univ. of Mich.)).

247. "It was the custom of the time to spend most of the Sabbath in and about the Church." C. HANNA, *supra* note 99, at 142.

248. See *supra* notes 205-41 and accompanying text.

Some confusion may arise because the churches with which the Bingham family were associated were often referred to as Presbyterian while the churches with which Reverend Walker was associated were often called Congregational. However, it would appear that for all practical purposes, at least within Harrison County, there were no material antislavery difference between the two. R. O'Dell, *The Early Anti-Slavery Movement in Ohio* 45 (1948) (unpublished doctoral dissertation, Univ. of Mich.), traces cooperation in Ohio between Congregationalists and Presbyterians back to the 1790's. Such cooperation was apparently widespread, and in 1801 a "Plan of Union" was adopted whereby Presbyterian and Congregationalists would work together particularly in Ohio, New York, and the frontier area. C. FAIRMAN, *RECONSTRUCTION AND REUNION, 1864-1868*, at 897 (1971). This resulted not only in the use of Presbyterian ministers by Congregational congregations and Congregational ministers by Presbyterian congregations, but in many instances congregations that were themselves mixed. R. O'Dell, *supra*, at 45. See generally F. WEISENBURGER, *THE PASSING OF THE FRONTIER, 1825-1850* (1941). Both Associate Reform and Associate Congregation Churches were said to have been the forerunners of the United Presbyterian Churches in this area. Hunter, *supra* note 118, at 260-61.

Both churches were described as ones in which "the more radical adherence to anti-slavery were found." R. O'Dell, *supra*, at 356. Moreover, given the closeness on religious views and ideology with respect to slavery, the selection of Franklin College as a suitable institution for John Bingham's education seems to indicate that any difference between the two churches was minimal.

249. For example, Rev. Walker, whom Bingham may have come in contact with in Mercer, Cadiz, and New Athens, was repudiated to have expressed "his strong anti-slavery sentiment . . . in [the] pulpit and in the hall." Hunter, *supra* note 118, at 177.

There appears to be no existing catalog of regulations for the time period in which Bingham was at Franklin College. However, the college catalog for 1853 indicates that the college began daily with the reading of scriptures and prayer and that students were required to attend church on Sunday: "absence without a sufficient reason from Public Worship on the Sabbath,

Indeed, Bingham was said to have indicated that his antagonism to slavery was given further support through his friendship with Rev. Thomas Hanna of the Associate Presbyterian Church.²⁵⁰ Hanna was also a trustee of Franklin College and a "staunchly pro-abolitionist" ally of the Rev. John Walker.²⁵¹

V. LEGAL STUDIES

Both Ohio and Pennsylvania had comparatively stringent requirements for admission to the bar in the 1830's. In addition to being examined by judges of the court and found to be "qualified" and of "good moral character," an applicant was required to "produce from some attorney or counsel-at-law a certificate, setting forth that such applicant [was] of good moral character, and that he [had] regularly and attentively studied the law, during the period of two years, previous to his application for admission."²⁵² Though the effectiveness of the preceptor system as a method of preparing one for the practice of law has generally been questioned,²⁵³ no one has suggested that the preceptor was without effect or influence upon his pupil.²⁵⁴

Bingham's legal education commenced in Mercer, Pennsylvania where he studied law "for some years"²⁵⁵ under John J. Pearson and William Stew-

or the daily opening of College in the morning by reading the Scriptures and Prayer . . . cannot be tolerated." CATALOGUE OF OFFICERS AND STUDENTS OF FRANKLIN COLLEGE, NEW ATHENS, OHIO 19 (1853) [hereinafter 1853 FRANKLIN COLLEGE CATALOGUE].

250. E. BEAUREGARD, *supra* note 170, at 79 (quoting letter from John Bingham to Professor A.F. Ross (July 21, 1867)).

251. *Id.*

252. 29 Ohio Laws 411 (1831). The Pennsylvania provisions were similar. *See, e.g.*, 1834 Pa. Laws 164.

253. *See* G. MACDONALD, HOW SUCCESSFUL LAWYERS WERE EDUCATED (1896). Bingham's obituary suggests that he spent two years of "close reading" in studying for the bar. The Cleveland Leader, Mar. 20, 1900, at 1, col. 3. Riggs cites the *Leader* for the proposition that Bingham had two years of "intensive training and close reading." C. Riggs, *supra* note 12, at 13. Brichford states that Bingham spent the two years "reading the hornbooks for his bar examination." M. Brichford, *supra* note 12, at 6.

254. For example, Chief Justice Salmon P. Chase read law under William Wirt, the Attorney General of the United States under Presidents Monroe and John Quincy Adams. C. FAIRMAN, RECONSTRUCTION AND REUNION 27 (1971). Wirt, although considered one of the nation's leading attorneys, was not as gifted as a teacher. Fairman indicates that his "supervision was somewhat casual" and that seems to be a charitable estimation of the interest he took in Chase's education. *Id.*; *see also* J. SHUCKERS, THE LIFE AND PUBLIC SERVICES OF SALMON PORTLAND CHASE 26-27, 29-30 (1970). Yet Chase held Wirt in high respect and maintained close relations with him and his family. *Id.*

255. The statutes required him to study for two years. This is the general account given in his obituary, The Cleveland Leader, Mar. 20, 1900, at 1, col. 3, and by W. SHOTWELL, *supra* note 99, at 179.

art—men who he described as “two eminent lawyers.”²⁵⁶ That characterization seems to be appropriate. If activity in land transactions is any indication, both were economically prosperous.²⁵⁷ Stewart is generally described as a “prominent attorney”²⁵⁸ with a “long, brilliant, and active public career” and abilities which “soon placed him at the head of his profession.”²⁵⁹

Pearson was said to be one of the “many bright attorneys who stood conspicuous at the Mercer bar” and to be a “leader in all political, business, and philanthropic movements.”²⁶⁰ Because of his active practice in the appellate courts, an assessment of at least a portion of his practice can be made. Between 1827 and 1840, the Pennsylvania Supreme Court reporter lists Pearson as counsel in seventy-five separate cases.²⁶¹ This suggests a large practice and compares favorably with others who were considered to be prominent lawyers in comparative times. The types of cases were those which one would expect of a prominent lawyer of the times: litigation of title to land and debt collection.²⁶²

Both Pearson and Stewart had studied law under John Banks²⁶³ who not only had a “large and lucrative”²⁶⁴ practice, but who was also, along with Bingham’s father, a leading political figure in Mercer. Banks served as a

256. Bingham Papers, *supra* note 47, Mss., roll 1, box 1, folder 4, item 30, at 1-3.

257. Grantor/Grantee Index, *supra* note 51. Not counting transactions in which they were acting as executors, the Mercer County, Pennsylvania Grantor/Grantee Indexes show Stewart involved in over 30 separate transactions and Pearson involved in over 50. *Id.*

258. MERCER COUNTY REGIONAL PLANNING COMMISSION, HISTORICAL RESOURCES INVENTORY FOR MERCER COUNTY 30 (1977) (featuring picture and description of Stewart’s house that was built in 1853).

259. HISTORY OF MERCER COUNTY, PENNSYLVANIA, *supra* note 49, at 262.

260. *Id.* at 257-58. Pearson’s father and grandfather were both judges in Pennsylvania. 15 ENCYCLOPEDIA OF PENNSYLVANIA BIOGRAPHY 342 (T. Montgomery ed. 1914). In a somewhat adulatory biographical sketch, Pearson is described as one who was “[d]eeply versed in the law, and delighting in the study and application of its principles.” *Id.*

261. I am grateful to Dawn Harris, A.A.S. 1980, B.S. 1984, M.S. 1986, The University of Akron, for locating the citations to the cases in which Pearson served as counsel. *See, e.g.*, Hawthorn v. Bronson, 16 Serg. & Rawk 269, 269 (1827) (first reported case); Gordon v. Commonwealth, 10 Watts 443, 443 (1840) (last reported case). Although Pearson was not appointed to the bench until 1849, his name disappears from the reporters after 1840.

262. Dianne Goss Paynter, B.A. 1979, Denison, J.D. 1982, The University of Akron School of Law, prepared a case-by-case analysis of Pearson’s litigation in the Pennsylvania Supreme Court. These conclusions are based upon that summary. It is said that “[Pearson] became most eminent in the trial of land titles, in which he was recognized as the highest authority.” COMMEMORATIVE BIOGRAPHICAL ENCYCLOPEDIA OF DAUPHIN COUNTY, PENNSYLVANIA 425 (1892).

263. J. WHITE, *supra* note 60, at 199-200; HISTORY OF MERCER COUNTY, PENNSYLVANIA *supra* note 49, at 257 (Pearson), 262 (Stewart).

264. *Id.* at 257.

Mercer councilman,²⁶⁵ actively promoted internal improvements,²⁶⁶ served three terms as a Whig Congressman,²⁶⁷ served as a state judge,²⁶⁸ served one year as the state treasurer,²⁶⁹ and was the Whig candidate for governor in 1841.²⁷⁰

Pearson and Stewart followed Banks into Whig politics. When Banks resigned from Congress, it was his former pupil Pearson who was chosen as the Whig Congressman to take his place.²⁷¹ During this time, Stewart served in the Pennsylvania Senate.²⁷² At the party nominating meeting in 1846, he was a member of the Democratic Whig Central Committee of Mercer County.²⁷³ At that convention, the party's opposition to slavery was reiterated.²⁷⁴ Subsequently, Pearson was elected to the state senate.²⁷⁵

In 1846, the Whigs nominated Pearson to the position of senatorial delegate.²⁷⁶ The resolutions adopted at the nominating convention supported free speech upon any subject and opposed the acquisition of any additional

265. J. WHITE, *supra* note 60, at 323.

266. *Id.* at 67.

267. He was elected to the Twenty-second, Twenty-third, and Twenty-fourth Congresses. He served from March 4, 1831 until his resignation in 1836. BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS 1774-1971, at 125 (1971) [hereinafter BIOGRAPHICAL DIRECTORY].

Richard C. Singer, B.A. 1978, George Washington University, J.D. 1983, The University of Akron School of Law, searched the *Congressional Globe* for the relevant time period and found no speeches by Congressman Banks. It was discovered, however, that Banks introduced a memorial signed by the citizens of West Greenville, Mercer County, Pennsylvania, "praying that a law may be passed abolishing slavery and the slave trade in the District of Columbia and the Territories." CONG. GLOBE, 23rd Cong., 2d Sess. 317 (1835). Whether this represented Mr. Bank's personal view or was simply providing a "service" for his constituents is not known.

268. He was judge of the judicial district that included Berks, Lehigh, and Northampton Counties, Pennsylvania. J. WHITE, *supra* note 60, at 200.

269. *Id.*

270. Banks lost the election to David R. Porter by a vote of 136,504 to 113,473. HISTORY OF CRAWFORD COUNTY, PENNSYLVANIA 132 (1885). After leaving public office, Banks spent the rest of his life in private practice in Reading, Pennsylvania, where he died in 1864. J. WHITE, *supra* note 60, at 200.

271. Pearson served from December 5, 1836 through March 3, 1837. BIOGRAPHICAL DIRECTORY, *supra* note 267 at 125. He was not a candidate for renomination, but apparently did run for the position in 1842 only to be defeated by William S. Garvin. *Id.* Garvin was the editor of the local paper, *The Western Press* and had been appointed postmaster for Mercer in 1837. See generally HISTORY OF MERCER COUNTY, PENNSYLVANIA, *supra* note 49, at 18.

272. HISTORY OF MERCER COUNTY, PENNSYLVANIA, *supra* note 49, at 306.

273. Notice, The Mercer County Whig, May 26, 1846, at 2, col. 3.

274. See *supra* text accompanying notes 88-92.

275. This means that Pearson was a member of the state legislature during the entire time Bingham was studying under his supervision. For three years he was chairman of the judiciary committee. HISTORY OF MERCER COUNTY, PENNSYLVANIA, *supra* note 49, at 258.

276. *Democratic Whig Meeting*, The Mercer County Whig, Dec. 29, 1846, at 2, col. 5.

territory: "We are, moreover, irreconcilably opposed to further increase of slave territory. Our country is already suffering under the foul blot on our political character. Let us not, therefore, add to this evil, but rather use all lawful efforts for its removal."²⁷⁷ In 1847 Stewart served as secretary of the Whig Central County Committee.²⁷⁸

In 1847, Pearson was a delegate to the Whig State Convention and a vice-president from Mercer County who nominated the party's candidate for governor, James Irvin.²⁷⁹ At that same convention the resolutions adopted included one opposing the acquisition of territory "for the purpose of an extension of slavery" and indicating that if new territory was acquired "it should not be attained by injustice, nor attended with an extension of slavery."²⁸⁰ In 1849, Pearson was appointed President Judge for Dauphin and Lebanon Counties, Pennsylvania, a capacity in which he served for the next thirty-three years.²⁸¹

Both Pearson and Stewart joined the Republican party in 1856,²⁸² as did Bingham. Indeed, both Bingham and Stewart were elected that year as Republicans to Congress.²⁸³ In endorsing Stewart's successful candidacy for Congress, the editor of *The Mercer County Whig* purported to give an historical account of Stewart's beliefs: "[H]e has always occupied the position which he now does—he is now, and has always been opposed to the extension of slavery, and to the encroachment of the Slave power."²⁸⁴

Bingham's association with Stewart and Pearson is consistent with other information that is known about him. As Charles Fairman has noted, one of the intriguing facts of early America is the web of interrelationships between politics, family, and friendship.²⁸⁵ Facts and relationships reinforce one another in a continuous web that suggests the Stewart/Pearson/Bingham con-

277. *Id.*

278. *Notice*, *The Mercer County Whig*, June 8, 1847, at 2, col. 3.

279. *The Mercer County Whig*, Mar. 23, 1847, at 1, col. 5.

280. *Id.* at 2, col. 1.

281. *HISTORY OF MERCER COUNTY*, *supra* note 63, at 258.

282. *BIOGRAPHICAL DIRECTORY*, *supra* note 267, at 1522.

283. Bingham and Stewart served together as members of the Thirty-fifth and Thirty-sixth Congresses (March 4, 1857-March 3, 1861). *Id.* at 1758. On Stewart's denunciation of the abandonment of the Missouri Compromise and his nomination as a Republican see, *Ratification Meeting*, *The Mercer County Whig*, July 9, 1856, at 3, col. 1; *Republican County Convention*, *The Mercer County Whig*, July 9, 1856, at 2, col. 6.

284. *The Mercer County Whig*, Sept. 11, 1856, at 2, col. 3.

285. C. FAIRMAN, *supra* note 254, at 33 n.6: "These personal references suggest what becomes a strong impression when one has worked in [this] period . . . : that so far as public life was concerned, America was still a rather close community—so interwoven are the associations one observes." *Id.* Fairman further noted that "[i]n the period of Reconstruction, each item seems to be related to everything else." *Id.* at 239.

nections returned full circle to support the familiarity with the abolitionist principles of each.

Bingham's father, Hugh, as the clerk of courts,²⁸⁶ undoubtedly had professional, if not political, contacts with all of the principals: John Banks and his two pupils, Stewart and Pearson. Both Hugh Bingham and John Banks were active promoters of internal improvements. Stewart, Pearson, and John Bingham were all members of the same local debating society.²⁸⁷ It was Pearson who was said to have advised young John Bingham to attend abolitionist Franklin College.²⁸⁸ All three men were, within their own communities and respective times, leaders of the Whig Party who, upon the momentous developments of 1856, led their people into the newly formed Republican Party.

All of these factors coalesce to suggest that Stewart and Pearson were at least kindred spirits on the question of slavery and that they may have influenced Bingham towards the path of abolition. Simultaneously, he received a legal education and, upon their recommendation, was admitted to the practice of law on March 25, 1840.²⁸⁹

VI. LAW PRACTICE

Unlike his fellow Ohioan Salmon P. Chase, who won laurels as "the attorney general for runaway slaves"²⁹⁰ and "a walking arsenal of the law of liberty,"²⁹¹ Bingham's reputation as an "anti-slavery lawyer"²⁹² did not stem from the defense of fugitive slaves.²⁹³

Nevertheless, Bingham's very first case in the Ohio Supreme Court found him and his partner, Josiah Scott, defending a black woman, Nancy Smith, against the attempts of a white creditor, Joseph Jordan, to collect upon a promissory note which Smith had apparently executed.²⁹⁴ Developing one

286. See *supra* note 62 and accompanying text.

287. HISTORY OF MERCER COUNTY, *supra* note 63, at 654-55.

288. *Id.* at 655.

289. Certificate of Admission by the Protonotary of the Court of Common Pleas. Bingham Papers, *supra* note 47, roll 2, box 1, folder 6, item 556.

290. 3 A. BEVERIDGE, ABRAHAM LINCOLN 110 (1928); C. FAIRMAN, *supra* note 254, at 29. Chase's antislavery cases included defending an escaped slave, see C. FAIRMAN, *supra* note 254, at 29, and defending James G. Birney for harboring an escaped slave. See *Jones v. Van Zandt*, 46 U.S. (5 How.) 215 (1847); *Driskell v. Parish*, 7 F. Cas. 1093 (C.C.D. Ohio 1847) (No. 4087); *Birney v. State*, 8 Ohio 230 (1837);

291. HISTORY OF CINCINNATI AND HAMILTON COUNTY 173 (1894).

292. THE RECONSTRUCTION AMENDMENTS' DEBATES, at x (A. Avins ed. 1967).

293. It may be that Bingham's inactivity in antislavery cases stemmed from a lack of opportunity. Though Harrison County was on the route of the underground railroad, numerous local sources reviewed by this author made no reference to any fugitive slave cases.

294. *Jordan v. Smith*, 14 Ohio 199 (1846). The court's opinion reprints the note which

of those "delicious ironies"²⁹⁵ which was to appear so often later in the Republican's Reconstruction policy, Bingham and Scott²⁹⁶ made use of the Ohio statute prohibiting blacks from giving testimony in any case in which a white person was a party.²⁹⁷ Because a black person witnessed the note, Bingham and Scott interposed the statute to bar the plaintiff from proving the note's execution. Though the court indicated that the plaintiff had a "good cause of action, and ought to recover this money," it found that he could not prove the execution of the note because the statute rendered his witness incompetent.²⁹⁸ In so holding, the court rejected arguments that the bar could be waived by the white party, indicated its intention to enforce the statute uniformly and expressed the opinion that in every instance the statute's uniform effect had been "to prevent justice."²⁹⁹ There are no recorded cases in which Bingham represented interests adverse to those of black people.³⁰⁰

indicates it was signed in "Smithfield," a small town in Jefferson County. *Id.* In 1829, Nathaniel Benford, a Virginia Quaker, manumitted nine slave families and made arrangements for them to start new homes on two hundred and sixty acres about two miles outside of Smithfield. They became the nucleus for a small black community known as "Hayti." See generally Hunter, *supra* note 118, at 274-85.

Though it is likely that Nancy Smith had some connection with this colony, it should be noted that the Ohio Supreme Court docket indicates that this case arose from Harrison and not Jefferson County. *Jordan*, 14 Ohio at 199 (see docket for January Term, at 86 (1846) (available at Ohio Historical Society, Columbus, Ohio)). One can only suppose that during the intervening years, Smith moved from Smithfield to a location in Harrison County. By current roads, the county line is approximately five miles from Smithfield.

295. The term is taken from an article written by Aviam Sofier. *E.g.*, Sofier, *Protecting Civil Rights—A Critique of Raoul Berger's History*, 54 N.Y.U. L. REV. 651, 669 (1979).

296. Both the reported case and the court's docket indicated only that "Scott and Bingham" appeared on behalf of Smith. It is therefore impossible to tell who actually appeared for her at trial or at argument in the state supreme court. Josiah Scott was Bingham's brother-in-law and his first law partner. He was the elder of the two and had been admitted to the bar before Bingham. This may explain why his name appears first.

However, in the practices of that day, it was not uncommon for one lawyer to handle the trials and the other to do the "office" work. By all accounts, it was Bingham who did the former and Scott who did the latter. According to Brichford, Scott did most of the firm's probate work while Bingham's cases involved collections on notes, criminal defense, and appeals. M. Brichford, *supra* note 12, at 22. Hence, it was most likely that Bingham tried the case, made the initial objection, and argued the case on appeal. *Jordan*, 14 Ohio at 199-200.

297. Section 4 of the Act of April 1, 1807, 1807 Ohio Laws 54. The statute is reprinted in part in the court's opinion. *Jordan*, 14 Ohio at 201. These laws were common in the United States. It has been suggested that at one time Scots were similarly disqualified from giving testimony under English law. Marcus, *The Tudor Treason Trials: Some Observations on the Emergence of Forensic Themes*, 1984 U. ILL. L. REV. 675, 697 h.146, 698 (citing Reg. v. Thomas Howard, Duke of Norfolk, 1 State Trials 957, 992, 1002, and 1027 (1571)).

298. *Jordan*, 14 Ohio at 204.

299. *Id.*

300. Compare this record with that of Abraham Lincoln. In *Bailey v. Cromwell*, 4 Ill. (1 Scam.) 71, 71 (1841), Lincoln argued that a promissory note made for payment of a slave was

VII. PROFESSIONAL ASSOCIATES

Bingham's professional associations included affiliations with antislavery men of varying beliefs. For instance, John Bingham's first law partner was Josiah Scott,³⁰¹ his brother-in-law³⁰² and an 1829 graduate of Franklin College.³⁰³ Scott was a member of the Franklin College Board of Trustees at a time when both the majority and the most influential members of the board were said to have been antislavery men.³⁰⁴ He was Bingham's co-counsel in the successful representation of Nancy Smith.³⁰⁵ In 1834, Scott was elected prosecutor of Harrison County.³⁰⁶ He served until 1838 when he was succeeded by Edwin Stanton.³⁰⁷

Scott was active in local community affairs. He was secretary and one of the principal speakers for the Harrison County Temperance Society.³⁰⁸ He was appointed as a member for the committee to obtain a subscription of stock for the purpose of constructing a local turnpike.³⁰⁹ Additionally, he was appointed, along with his future father-in-law, Thomas Bingham, to a Whig committee of correspondence to prepare for a Fourth of July celebration.³¹⁰

In 1839, after his term as prosecutor expired, Scott ran unsuccessfully as the Whig candidate to represent Harrison County in the Ohio House of Representatives.³¹¹ Though the newspaper accounts of the issues in the campaign are scant, it appears that the Ohio Legislature had recently enacted a

void for want of consideration since a human being could not be sold in Illinois. Later, Lincoln represented a slave owner seeking to keep a woman and her four children in slavery. See Chroust, *Abraham Lincoln Argues a Pro-Slavery Case*, 5 AM. J. LEGAL HIST. 299, 303-04 (1961).

301. This Josiah Scott lived in Harrison County, Ohio. His first cousin with the same name lived most of his life in Hamilton County, Ohio. The latter served on the Ohio Supreme Court.

302. Scott and Bingham married sisters, both daughters of Uncle Thomas Bingham. W. SHOTWELL, *supra* note 99, at 178, 180, 182.

303. FRANKLIN COLLEGE 1825-1908, NEW ATHENS, OHIO 144 (Wheeling ed. 1908) (available at the Western Reserve Historical Society, Cleveland, Ohio).

304. R. CLARK, *supra* note 128, at 257.

305. *Jordan v. Smith*, 14 Ohio 199 (1846); see also *supra* notes 294-99 and accompanying text.

306. C. HANNA, *supra* note 99, at 111.

307. *Id.*

308. The Harrison Telegraph, Dec. 8, 1832, at 3, col. 1. Scott's future wife, Mary Jane Bingham—John Bingham's cousin—was "one of the six ladies" selected to solicit members from other countries. *Id.*

309. *Turnpike Meeting*, The Organ, June 6, 1839, at 3, col. 2.

310. *Celebration Committee*, The Organ, June 6, 1839, at 2, col. 1.

311. *Abstract of the Official Returns of the Annual Election for State and County*, The Organ, Oct. 10, 1839, at 3, col. 1; *To the Polls: To the Polls!*, The Organ, Oct. 3, 1839, at 3, col. 1 (setting forth the Whig ticket).

bill to assist in the return of fugitive slaves.³¹² The incumbent representative had voted in favor of this law and, for that reason, one anonymous letter to the editor called for his defeat.³¹³ Another correspondent, "A Republican," attacked Scott's opponent primarily for that vote.³¹⁴

Apparently, the opposition Democratic newspaper had accused Scott of being an abolitionist. In addition, the newspaper alleged that he obtained the Whig Party nomination as the result of a deal with abolitionists. In the course of denying those charges, the correspondent stated:

It is a positive falsehood that Scott is an abolitionist; according to the modern sense of that term. We do not make this assertion, supposing he would be any worse, were he an abolitionist, but we are merely stating a notorious fact.³¹⁵

Attempting to outline Mr. Scott's political views, the correspondent added:

Mr. Scott is for free discussion, and for the abolitionists enjoying their liberties guaranteed by the Constitution, as other citizens—he is also for the right of trial by jury, and the right of petition, as guaranteed by that instrument—he is for bank reform, and advocate[s] for a sound circulating currency; as it is for his own interest, as much as any other in [the] community.³¹⁶

Along with his father-in-law, Thomas Bingham, Scott was a Harrison County Whig Central Committee member³¹⁷ and a delegate to the Whig state convention in 1840.³¹⁸ One of his fellow delegates to the convention was abolitionist William Tingley.³¹⁹ Scott was elected to the Ohio Senate where he served from 1840 to 1842,³²⁰ and in 1851.³²¹ Local histories refer to him as one of the local bar's "prominent" members.³²²

Scott was the elected delegate from Harrison and Jefferson Counties to the Ohio Constitutional Convention of 1850-1851.³²³ He does not appear to have played a prominent role in that convention and, in fact, made only one

312. "AN ACT Relating to Fugitives from labor or service from other States," 1839 Ohio Laws 38. It repealed, at least in part, "AN ACT to prevent Kidnapping," 1831 Ohio Laws 442, which offered blacks protection against kidnapping.

313. *The Organ*, Aug. 29, 1839, at 3, col. 1.

314. *The Election*, *The Organ*, Oct. 3, 1839, at 3, col. 3.

315. *Id.*

316. *Id.* The new act apparently denied a jury trial when the question was whether one was a slave or a free person. See 1839 Ohio Laws 38.

317. *General Democratic Harrison Meeting in Cadiz*, *The Organ*, Mar. 12, 1840, at 3, col. 1; *General Democratic Harrison Meeting in Cadiz*, *The Organ*, Mar. 5, 1840, at 3, col. 1.

318. *The Organ*, Jan. 16, 1840, at 3, col. 5.

319. *Id.*; see also *supra* note 166 and accompanying text.

320. C. HANNA, *supra* note 99, at 110.

321. *Id.* at 113.

322. *Id.*

323. 1 OHIO CONSTITUTIONAL CONVENTION DEBATES 5 (1851).

reported speech.³²⁴ However, his recorded vote in certain roll-call votes gives a somewhat varied insight into his attitudes on race.

Throughout the convention numerous petitions were presented calling for equal rights for blacks, voting rights for women, and other similar reforms. At the outset there seemed to be a disagreement as to whether such petitions would be "received" for the convention's consideration. The initial test arose in a case where a group of petitioners, presumably white, sought to secure "equal rights, privileges, and protection to all . . . inhabitants of this State, without any restrictions on account of color whatever."³²⁵ The advocates of receiving the petition based their position upon the right of the people to petition their representatives.³²⁶ Scott was a member of the overwhelming majority that voted in favor of receiving the petition.³²⁷

The next issue considered was the receipt of a petition signed by twenty black people from Warren calling for removal of "everything from the Constitution that makes distinction between people on account of color."³²⁸ While there was no recorded debate on this issue, it would appear that at least twenty-four members of the convention believed that the right to petition did not extend to blacks because the petition was received by a vote of seventy-six to twenty-four.³²⁹ Once again, Scott voted with the majority to receive the petition.³³⁰

Scott apparently was unwilling to extend political rights to black people and, in a vote upon a motion to strike out the word "white" as a limitation upon voting, was recorded among the sixty-six members of the convention rejecting such a change.³³¹ He also voted against a proposal to delete the term "white" from the militia.³³²

Nevertheless, on what in that day would have been termed social issues, Scott's votes seemed to support protection of the rights of black people. The committee report concerning schools provided that schools should be open to "youth of all classes," but with the provision that "black and mulatto youth shall not attend the schools for white youth, unless upon common consent."³³³ When a proposal was made to create an absolute prohibition

324. *Id.* at 340.

325. *Id.* at 59.

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. *Id.* at 60.

331. 2 OHIO CONSTITUTIONAL CONVENTION DEBATES 555-56 (1851). There were 12 votes cast in favor of this proposal. *Id.*

332. *Id.* at 350.

333. *Id.* at 18.

against white and black children attending the same school, Scott voted with the majority to defeat the motion.³³⁴ He subsequently cast his vote in favor of an unsuccessful motion to strike the entire section upon the grounds that the current constitution made "no distinction, in this regard, between whites and blacks and I trust that a Convention called [to] form the organic law, will not go backward."³³⁵

Further opportunity for debate came when delegate Jacob Blickensderfer³³⁶ of Tuscarawas County moved to insert the following into the constitution: "Appropriations of money may be made for the colonization of free people of color residing in the State with their consent, on the coast of Africa, whenever in the opinion of the General Assembly it can be done without causing an emigration of such persons from adjoining States."³³⁷

In response, a countermotion was made to require the legislature "by appropriate legislation as may be consistent with the Constitution of the United States, [to] discourage the emigration of the free black population of other States, and territories, of the Union into this State."³³⁸ Scott joined the majority in defeating the latter proposal.³³⁹ He then voted in favor of the Blickensderfer amendment. The amendment, however, was defeated by a seventy-one to twenty-six vote.³⁴⁰

In 1854, Scott's name led the list of those calling for a public meeting to protest against the Nebraska bill sponsored by Stephen Douglas.³⁴¹ This meeting adopted resolutions which, while supporting the Missouri Compromise, "affirm[ed] uncompromising hostility to slavery and slavery apologists."³⁴² By 1856, Scott was an active member of the anti-Nebraska fusion movement which culminated in the formation of the Ohio Republican Party. Furthermore, he was one of the candidates for the Republican Party's nomination for Congress, but was defeated by his brother-in-law, John Bingham.³⁴³

334. *Id.* at 19.

335. *Id.* The speech is that of Dr. Norton Townsend, who is most remembered for having supported women's suffrage at the same convention and for his decisive role in the election of Salmon P. Chase to the United States Senate.

336. Blickensderfer appears to have been an 1840 graduate of Franklin College. E. BEAUREGARD, *supra* note 170, at 45.

337. 2 OHIO CONSTITUTIONAL CONVENTION DEBATES 597 (1851).

338. *Id.* at 604.

339. *Id.*

340. *Id.* at 605.

341. C. Riggs, *supra* note 12, at 113 (citing *The Cadiz Republican*, Mar. 9, 1854, at 2, col. 4).

342. *Id.* (citing *The Cadiz Republican*, Mar. 23, 1854, at 2, col. 4).

343. B. Hasin, *supra* note 12, at 121-22.

It is possible that Bingham was co-counsel with David K. Cartter,³⁴⁴ who was later described as the "good friend"³⁴⁵ and "political lieutenant" of Benjamin Wade.³⁴⁶ By March of 1850, Bingham had moved to Cincinnati to practice law.³⁴⁷ Throughout 1851, he was the law partner of William Johnston, the unsuccessful Whig gubernatorial candidate in 1850.³⁴⁸ Though Johnston's views on slavery have not been explored, he may have been co-counsel with Salmon Chase and James Birney in at least one fugitive slave case.³⁴⁹ Though he was apparently less than enthusiastic about abandoning the Whig Party for the Republican Party,³⁵⁰ Johnston had previously been

344. The case of *Leggett v. State*, 15 Ohio 283, 284 (1846), lists as counsel: "Hume & Bingham and D.K. Carter." Though this reference omits the second "t" in Cartter's name, it appears that this is the same person and the name has been misspelled. Cartter practiced in Stark County, Ohio. W. TAYLOR, *OHIO IN CONGRESS FROM 1803 TO 1901*, at 197 (1900). This case arose from Tuscarawas County, which is adjacent to Stark County; in 1841 both counties comprised part of Ohio's Fifth Judicial District. *STATUTES OF THE STATE OF OHIO* 202-03 (Swan ed. 1841).

345. H.L. TREFOUSSE, *BENJAMIN FRANKLIN WADE* 125 (1963).

346. C. FAIRMAN, *supra* note 254, at 246. Cartter played a prominent role at the 1860 Republican Convention. Not only was he a frequent participant in the debates, but it was he who changed enough of Ohio's votes from Chase to Lincoln, securing Lincoln's nomination. *PROCEEDINGS*, *supra* note 78, at 153. H.L. TREFOUSSE, *supra* note 345, at 128. Cartter later became Chief Justice of the Supreme Court for the District of Columbia and issued the arrest warrant for Adjutant General Thomas when President Johnson attempted to remove Stanton as Secretary of War.

347. The exact reasons for this move are unclear. However, Cincinnati was the leading metropolis at that time, not only in Ohio but in the entire West. As the center of commerce, many young attorneys moved there as the place of opportunity. Advertisements announcing his presence as a partner of one "Chambers" appeared beginning with the March 7, 1850 issue of the *Cincinnati Gazette*. They continued at least through the April 4, 1851 issue.

348. Advertisements for the law firms of "Wm. Johnston, J.A. Bingham, and Alex Todd" appear in the *Cincinnati Gazette* from January 7, 1851 through April 7, 1851. Johnston may have also been a friend of Bishop Matthew Simpson. Letter from William Johnston to Bishop Matthew Simpson (Oct. 3, 1864) (available in the Simpson Papers, Library of Congress, Washington, D.C.).

349. See J. SHUCKERS, *supra* note 254, at 75 n.1, but note that the name is spelled "Johnson" with a "t."

350. It was said that Johnston was "not an admirer of the school of politicians to which many of those who were active in organizing the Republican movement belonged. . . . He did not take the stump for Fremont, nor was he often heard in 1860, though holding the tenants of the . . . party and voting its ticket." "A memorial of the late Judge William Johnston by the Bar of Hamilton County" at 11, *reprinted in* *IN MEMORIAM. WILLIAM JOHNSTON, REMARKS MADE AT BAR MEETING. RESOLUTIONS, REMINISCENCES, LETTERS AND NEWSPAPER NOTICES, CINCINNATI*. (1863) (available at Cincinnati Public Library, Cincinnati, Ohio). This was apparently published by Thomas T. Heath who acted as secretary of the bar meeting after Johnston's death, which was held on October 31, 1891. It would appear that his reluctance might have stemmed from "a sad undercurrent of disappointment that he had not accomplished more in a political way." *Id.* Johnston was one of the leading lawyers of the State and afterwards formed a partnership in Washington, D.C. with Thomas Corwin, a conservative Republican.

chosen on two separate occasions by the Governor of Ohio to go into slave states to represent Ohio's interest.³⁵¹

During this same time period, Bingham apparently became acquainted with former Ohio secretary of state and Whig, Samuel Galloway.³⁵² Correspondence between Bingham and Galloway reveals that they not only exchanged political views,³⁵³ but they were both involved in litigation together.³⁵⁴ As early as 1836, Galloway was an agent of the American Anti-Slavery Society.³⁵⁵

By 1852, Bingham had moved back to Cadiz in Harrison County, Ohio.³⁵⁶ In 1853, he was co-counsel with former state legislator, Congressman, and judge, Benjamin S. Cowen.³⁵⁷ Though a Whig, Cowen was said to be "leaning strongly to the anti-slavery side, and in 1848 he supported Van Buren, the anti-slavery candidate, as against General Taylor the regular Whig nominee."³⁵⁸ In 1857, Bingham and Cowen were major speakers at a Republican Convention in Jefferson County, Ohio.³⁵⁹

In 1855, Bingham formed a partnership with Lewis Lewton which lasted

351. According to his former pupil, E.C. Eckley, Johnston was "twice selected by the Governor of Ohio to contest with the ablest counsel of Virginia and Kentucky questions growing out of the relation of slavery." Letter of October 29, 1891, *reprinted in id.* at 18. One of these incidents occurred in 1846 when Johnston was sent as the representative of the Ohio Governor Bartley to extradite Messrs. Forbes and Armitage for kidnapping a free man named Jerry Phinney who they claimed was an escaped slave. The matter was referred to the Kentucky Circuit Court at Franklin where the case was argued by Johnston. *Id.* at 11-12.

352. BIOGRAPHICAL DIRECTORY *supra* note 276, at 982.

353. Letter from John Bingham to Samuel Galloway (Dec. 2, 1850) (available in the Samuel Galloway Papers, Ohio Historical Society, Columbus, Ohio). Bingham refers to the Union meeting in Cincinnati and the fugitive slave law.

354. *Id.* The letter referred to the "Clark case" and indicates that Galloway was correct, "payments are due this year." In the letter, Bingham indicated that according to James Gray—one of Bingham's partners in New Philadelphia—"a very small portion" had been received by Gray and that more was expected soon. He stated that he had told Gray to "remit" to Galloway whatever money was received. Riggs, apparently assuming this payment was for services rendered, concluded that Bingham and Galloway were "associated" together on the case. C. Riggs, *supra* note 12, at 83. The letter, however, also referred to a "judgment" and it is more likely that Bingham and Galloway were opposing counsel.

355. Graham, *supra* note 24, at 623 n.145.

356. In an 1899 interview, Bingham indicated that he moved back to Cadiz because his "family wanted [him] to return to [the] healthful hills." M. Brichford, *supra* note 12, at 18. Riggs suggested that the motives may have been financial. C. Riggs, *supra* note 12, at 89. Though the exact date of Bingham's return is unknown, on September 5, 1851, the Whig Convention nominated Bingham as its candidate for Common Pleas Judge of Harrison County. *Id.* at 93-94.

357. Kirby v. State, 1 Ohio St. 185, 186 (1853).

358. CENTENNIAL HISTORY OF BELMONT COUNTY, OHIO AND REPRESENTATIVE CITIZENS 105 (A. McKelvey ed. 1903).

359. *The Black Republican, Mass Convention*, The American Union (Steubenville), Sept. 23, 1857, at 2, col. 1.

until 1863.³⁶⁰ Lewton was a Free-Soil Democrat who was elected Secretary of Harrison County's "Fusion Anti-Nebraska Convention," which later led to the formation of the local Republican Party.³⁶¹

VIII. POLITICAL ASSOCIATES

John Quincy Adams won the title "Old Man Eloquent" not as President of the United States, but in his later service as a Massachusetts Congressman from 1831 until his death in 1848. Although Adams avoided any close identification with the abolitionists, he nevertheless became an abolitionist hero.³⁶² While many of his fights were directed towards the first amendment issue of the right to petition Congress, a right Adams felt was violated by the "gag" rule, the underlying issue was slavery.

In 1838, when the citizens of the Western Reserve sent Joshua R. Giddings as their representative to Congress, "Old Man Eloquent" gained "a staunch ally."³⁶³ Giddings has been described as a "militant anti-slavery leader"³⁶⁴ a characterization which seems justly deserved.³⁶⁵ The Western Reserve comprised the greater portion of Giddings's district. An account of the Reserve by an author who lived through those times is insightful: "[The

360. Bingham Papers, *supra* note 47, at 22. Advertisements for "Bingham and Lewton" appear in various issues of the local newspapers. *E.g.*, The Cadiz Republican, Mar. 19, 1856, at 4, col. 6.

361. *Fusion Anti-Nebraska Convention*, The Cadiz Democratic Sentinel, July 12, 1854, at 2, col. 3.

362. D. HOWE, *THE POLITICAL CULTURE OF THE AMERICAN WHIGS* 62-68 (1979). Howe refers to Adams as a "crypto-abolitionist." *Id.* at 63. The depth of Adams' antislavery attitudes is a matter of debate. However, he was careful to reserve the government's right to abolish slavery everywhere in the event of war, and some of his own writings indicate a belief in the right of the slaves to use violence to obtain their freedom. Consider, for example:

That nature's God command the slave to rise, And on the oppressor's head to break the chain.

BARTLETT'S QUOTATIONS 418 (15th ed. 1982).

As early as 1837, Adams was speaking of looking forward to not just the restriction of slavery but to its "extripation." D. HOWE, *supra*, at 64. He wrote an introduction to the biography of abolitionist martyr Elijah Lovejoy. *Id.* Additionally, Adams personally intervened to help liberate a free black woman who had been kidnapped into slavery. In 1841, he argued before the United States Supreme Court for blacks charged in the takeover of the Spanish slaver *Amistad*. *Id.* In 1842, he attempted to delete the word "white" from the District of Columbia's voting requirements. *Id.* Adams introduced a constitutional amendment which would have provided for gradual emancipation of blacks by freeing all children born after July 4, 1842. *Id.*

363. F. WEISENBURGER, *THE PASSING OF THE FRONTIER: 1825-1850*, at 377 (1941).

364. *Id.* at 337.

365. For a modern biography of Giddings, see J. STEWART, *JOSHUA R. GIDDINGS AND THE TACTICS OF RADICAL POLITICS* (1970). Congressman George W. Julian, Giddings' son-in-law, wrote a biography entitled *The Life of Joshua R. Giddings* which is of interest. See W. BUELL, *JOSHUA R. GIDDINGS* (1882).

Reserve] lay not at the geographical center but at the moral center. About it there grew up on all sides a community . . . firm and fearless; . . . impatient of wrong and injustice; . . . hard-headed, practical and sensible; . . . liberal and enlightened."³⁶⁶

Whatever the exaggeration with respect to the constituents, there is no exaggeration when the account is applied to Congressman Giddings. His record as a Congressman reveals constant confrontations with others over slavery issues.³⁶⁷ Highlights included being censured for violating the gag rule, resigning over the censure, and being reelected by his constituents in a run-off election against a more conservative member of his party.³⁶⁸ He wrote the original draft, revised for final distribution by Salmon P. Chase,³⁶⁹ of the "Appeal of the Independent Democrats" protesting Senator Douglas's bill to organize the Nebraska Territory, which led to the formation of the Republican Party.³⁷⁰ He was a delegate to the Republican Conventions of 1856 and 1860 and instrumental in inserting key abolitionist doctrine into the platforms.³⁷¹

In 1855, Giddings was selected to be included in a book on *Modern Agitators*.³⁷² That account appears to be an accurate summary of his entire Congressional career:

He is intimately connected with the anti-slavery reform in America—was one of its first and warmest supporters. He has been so long known as an uncompromising opponent of Negro slavery in the United States, that he is looked upon everywhere as a kind of moral hero

. . . [I]t is his "one idea," to make war upon the institution [of slavery].³⁷³

Adams held Giddings in high estimation³⁷⁴ and it was to Giddings that he

366. W. BUELL, *supra* note 365, at 16.

367. See generally J. STEWART, *supra* note 365, at 73.

368. *Id.* at 71-76.

369. J. SHUCKERS, *supra* note 254, at 140 n.1.

370. This appeal was signed by Senator Salmon P. Chase (Ohio) and Charles Sumner (Massachusetts), Representatives Joshua R. Giddings (Ohio), Edward Wade (Ohio), Gerritt Smitt (New York), and Alexander De Witt (Massachusetts). It was printed in the Washington and New York newspapers on the 24th and 25th of January. J. SHUCKERS, *supra* note 254, at 147.

371. J. STEWART, *supra* note 365; see also G. JULIAN, *supra* note 365, at 136-37; PROCEEDINGS, *supra* note 78, at 133-37, 142.

372. D. BARTLETT, MODERN AGITATORS: OR PEN PORTRAITS OF LIVING AMERICAN REFORMERS 170-82 (1855).

373. *Id.* at 170-72.

374. For example, in 1844, Adams wrote a highly complimentary poem to Giddings in which he spoke of Giddings as a "kindred soul" with whom he shared the object of restoring "[o]ur countrys, and the rights of men." W. BUELL, *supra* note 365, at 80-81 (emphasis ad-

bequeathed the mantle of antislavery leadership in the House.³⁷⁵ In this role, Giddings, like Adams, sometimes acted alone and sometimes with the support of Congress' small antislavery contingent. While Adams had been given the title "Old Man Eloquent," Giddings was referred to as "Father Giddings."³⁷⁶

Among his congressional proteges, John Bingham seems to have been the one with whom Giddings established the same type of special relationship that he had previously had with Adams. Bingham was an admirer of Giddings prior to his own election to Congress.³⁷⁷ When Bingham was elected to Congress, he moved to a boarding home in Washington, D.C. where Giddings and Edward Wade also resided.³⁷⁸ Bingham and Giddings, both of whom had left their families in Ohio, apparently spent a great deal of their social time together.³⁷⁹

Correspondence between Bingham and Giddings, both during Giddings' congressional career and after his appointment as United States Counsel General at Montreal, generally involved discussion of the antislavery issues of the day.³⁸⁰ The two men, however, were not without their disagree-

ded). As Buell noted: "When these lines were written Adams was nearly seventy-eight years of age, too sober, too wise, also too great a man to pen a page of verses in idle compliment." *Id.* at 81. According to Charles Sumner, Adams told him that Giddings was "the most valuable member of Congress." *Id.* at 193.

375. C. Huff, *Politics of Idealism: The Political Abolitionists of Ohio and Congress, 1840-1866*, at 12 (1969) (unpublished doctoral dissertation, Univ. of N.C.). According to Giddings, Adams, while on his deathbed, stated that:

he had no hope of the perpetuity of our Government, or for the liberty of our people, except that which was based upon its return to the doctrine on which it had been originally founded; and he exhorted me to exert whatever influence I could for the attainment of that object.

CONG. GLOBE, 35th Cong., 2d Sess., pt. 1, at 224 (1859). According to other accounts, Adams told Giddings: "I have more hope from you than from any other man." See D. HOWE, *supra* note 362, at 179.

376. G. JULIAN, *supra* note 365, at 339.

377. In a letter dated December 7, 1856, Bingham praised Giddings for his "noble stand . . . taken in debates on this and former occasions, in and out of Congress." Giddings Manuscript Calendar Letters 684 (1852-1864) (available at the Ohio Historical Society, Columbus, Ohio) [hereinafter Giddings Calendar].

378. C. Huff, *supra* note 375, at 123; see, e.g., CONGRESSIONAL DIRECTORY, 34th Cong., 1st Sess. 55 (1856); see also G. JULIAN, *supra* note 365, at 398 (Bingham and Giddings frequently occupied the same quarters).

379. An example of his contact with Giddings is found in a letter Giddings wrote to his wife which begins: "I am alone in my room. Bingham has gone home. I feel lonely." Letter from Joshua R. Giddings to Mrs. Giddings (Mar. 14, 1856), quoted in G. JULIAN, *THE LIFE OF JOSHUA R. GIDDINGS* 403 (1892). Similarly, in 1857 Bingham wrote Giddings, who had returned to Ohio, that he missed Giddings and urged him to write often. Giddings Calendar, *supra* note 377, at 686-87 (letter from John A. Bingham to Joshua R. Giddings (Feb. 3, 1857)).

380. See Letter from John A. Bingham to Joshua R. Giddings (Feb. 3, 1857), Giddings Calendar, *supra* note 377, at 686-87 (thanking Giddings for his two letters and approval on his

ments.³⁸¹ It is true that Giddings was referred to by Bingham as his "counselor"³⁸² and he later spoke of Giddings' "good instruction touching public service."³⁸³ Yet, it is also true that Giddings' developing legal attacks upon slavery can be traced to Bingham.³⁸⁴

Bingham and Giddings were also associated together in the public mind. For example, Mississippi Congressman William Barksdale believed that men such as Bingham and Giddings would never vote for the admission of another slave state.³⁸⁵ Both had endorsed Hinton Rowan Helper's controversial book *The Impending Crisis of the South*.³⁸⁶ Bingham's renomination for Congress in 1858 was touted by Democratic opponents as a victory for Giddings. For example, the Steubenville *American Union* reported Bingham's nomination as follows:

The abolition portion of the Republican party of this district (including Joshua R. Giddings) will be highly gratified at the nomination of Mr. Bingham, their choice . . . Mr. Bingham's nomination may be regarded as a victory of the Joshua R. Giddings school of abolitionists. Not only was the personal influence of the world-renowned abolitionist thrown in his favor by personal appeals, but his organ teemed with fulsome praise of Mr. Bingham's course, which was scattered broadcast throughout the District, wherever an abolitionist lived. He [Giddings] dictated to the people of this district the course to pursue and it was done. . . .³⁸⁷

Giddings' own failure to secure renomination to Congress was attributed by

vote on Minnesota); Letter from John A. Bingham to Joshua R. Giddings (Feb. 1, 1861) (denouncing the Crittenden Compromise and the speech of Charles F. Adams in support of it and denouncing the press for supporting compromise: "The People are betrayed—let them speak"); Letter from John A. Bingham to Joshua R. Giddings (Aug. 27, 1861), Giddings Calendar, *supra* note 377, at 1147; Letter from John A. Bingham to Joshua R. Giddings (Dec. 19, 1861), Giddings Calendar, *supra* note 377, at 748.

381. At the 1856 Republican Convention, Bingham supported Justice McLean while Giddings supported Fremont. C. HUFF, *supra* note 375, at 132 n.162 (citing and quoting portions of a Letter from Joshua R. Giddings to George W. Julian (Jan. 18, 1863)).

382. Giddings Calendar, *supra* note 377, at 686 (Letter from John A. Bingham to Joshua R. Giddings (Feb. 3, 1857)).

383. Letter from John A. Bingham to Joshua R. Giddings (Mar. 4, 1859) (Ohio Historical Society, Columbus, Ohio).

384. See Graham, *The 'Conspiracy Theory' of the Fourteenth Amendment*, 47 YALE L. J. 371, 394-95 (1938) (suggesting that Bingham's use of the due process clause as a basis for arguing against slavery may have antedated and influenced Giddings' subsequent use of the same clause).

385. CONG. GLOBE, 35 Cong., 1st Sess. 1216 (1858).

386. H. HELPER, *THE IMPENDING CRISIS OF THE SOUTH: HOW TO MEET IT* (1857). It was John Sherman's endorsement of this same book that was said to have denied him election as the Speaker of the House.

387. *Hon. John A. Bingham's Nomination—Abolitionism*, American Union [Steubenville], Aug. 25, 1858, at 2, col. 4.

some to his lack of attention in his own district.³⁸⁸

Upon Giddings' retirement from Congress, 104 members of the House and Senate presented him with a solid silver tea set and a walking stick with a gold head.³⁸⁹ Bingham organized the collection and was chosen to make the presentation to Giddings.³⁹⁰

According to Giddings' son-in-law, Bingham "loved [Giddings] as devotedly as any son could love his own father."³⁹¹ Giddings returned these feelings. In 1863 he wrote his son-in-law: "[G]o straight to Bingham for advice and exhortation. He is a jewel of a man, true as steel."³⁹² It was to this man, judged by Giddings' harsh standards to be as "true as steel," that Giddings "passed the mantel of antislavery leadership he had inherited from 'Old Man Eloquent.'"³⁹³ Indeed, Bingham was perceived by others to be the abolitionists' leader in the Congress. When Bingham was defeated for Congress in 1862 the *Cincinnati Enquirer* expressed the view of his opponents: "The fanatics in the next House will greatly miss and deplore the defeat of their Father Bingham."³⁹⁴

IX. CONCLUSION

John Bingham's background intimately acquainted him with antislavery

388. *Gone Up*, American Union [Steubenville], Sept. 1, 1858, at 2, col. 3 ("It probably would have been as well for Giddings to have attended to his own business, instead of devoting his time and energies to have Mr. Bingham nominated. Bingham is nominated but will be defeated at the election."). Giddings' defeat at the nominating convention of his party seems to have been a combination of more conservative elements against him and his age and failing health. See J. SMITH, JOSHUA R. GIDDINGS 259 (1970).

389. "Presented by 104 Members of the 35th Congress To Joshua R. Giddings, As a token of Respect for His Moral And Personal Integrity." See G. JULIAN, *supra* note 365, at 363 (describing the gifts in more detail and setting forth the inscription).

390. Letter from John A. Bingham to Joshua R. Giddings (Mar. 4, 1859) (available in the Giddings Calendar, Ohio Historical Society, Columbus, Ohio). Bingham added his own tribute in the formal language of that era:

[I]t is to me a matter of great gratification that so many Senators and Representatives have thus honored themselves by this testimonial of regard for your spotless character and strict integrity. In parting with you, allow me to thank you for your kind words and good instructions, touching public service, public interest, and may our Father in Heaven keep you.

Id.

391. G. JULIAN, *supra* note 365, at 399.

392. Letter from Joshua R. Giddings to George W. Julian (Jan. 18, 1863), *quoted in* C. Huff, *supra* note 375, at 123.

393. C. Huff, *supra* note 375, at 12. In what may have been a reference to "Father Giddings," the opposing *Cincinnati Daily Enquirer* rejoiced at the defeat of "Father Bingham" whom it said "[t]he fanatics in the next House will greatly miss." in 1862. *Cincinnati Daily Enquirer*, Oct. 17, 1862, at 2, col. 3. Bingham was, however, reelected to Congress the next term.

394. *Cincinnati Daily Enquirer*, Oct. 17, 1862, at 2, col. 3.

and abolitionist doctrine. He grew up in an antislavery environment. His father, Hugh Bingham, was a political ally of Pennsylvania Governor Joseph Ritner, who in the 1830's was considered to be the only strong antislavery governor.³⁹⁵ His father also ran as a Whig candidate nominated at a convention which opposed the extension of slavery and termed it an "abominable institution." John Bingham was apprenticed as the editor of an anti-Mason newspaper, at a time and in an area where the Anti-Masons also opposed slavery. The editor of that newspaper later supported the Liberty, Free Soil, and eventually, the Republican Parties.

Both John Bingham and his uncle, Thomas Bingham, were connected with the Associate Presbyterian Church, which was opposed to slavery. Both in the Mercer debating society and in his study of the law, Bingham was affiliated with John J. Pearson and William Stewart, two men who later ran for public office on antislavery platforms and who eventually became Republicans.

In Cadiz, where Bingham spent most of his life, there were active antislavery and abolitionist advocates who were not outcasts, but rather prominent members of society. His formal education was obtained from Franklin College which was recognized as a prominent abolitionist school under the leadership of Reverend John Walker, one of Ohio's leading abolitionists.

In his law practice, Bingham was associated with a number of individuals who were recognized for their antislavery views. Though he did not represent run-away slaves, there is no record of his having ever been counsel in a case that was harmful to the interests of black people. Indeed, in the only known case in which he was involved where a black person was a party, he defended a black woman's interest.

The Ohio district that repeatedly elected Bingham to Congress was one of the "pioneer anti-slavery strongholds" where "evangelical abolitionists" had been successful.³⁹⁶ In Congress, he developed a close personal and political relationship with the man considered to be the most radical of the abolitionists in Congress, Joshua R. Giddings.

A then contemporary analysis of Bingham's performance in Congress suggests that he was fully familiar with abolitionist doctrine and was not hesitant to use it:

John A. Bingham suddenly electrified the House by the first thorough-going pronouncement we have had of abolition principles Mr. Bingham speaks forcibly and with the heat of suppressed passions; he trots out anti-slavery quotations from Thomas Jeffer-

395. See *supra* notes 61-78 and accompanying text.

396. Graham, *supra* note 24, at 610-22.

son, and seems to have all the weapon extracts of Republican argument worn smooth to his hand by long use.³⁹⁷

An historical inquiry into Bingham's speeches suggests his importance as one who utilized abolitionist thought. In 1951 Jacobus tenBroek published his influential book *The Antislavery Origins of the Fourteenth Amendment*.³⁹⁸ Relying on an analysis of Bingham's congressional speeches in 1856,³⁹⁹ 1857,⁴⁰⁰ and 1859,⁴⁰¹ tenBroek concluded that Bingham was a synthesizer of abolitionist thought.⁴⁰² In Bingham's hands the "various strands of abolitionist constitutional development were combined."⁴⁰³ TenBroek noted:

The work of Bingham was the meeting ground, in a sense that the work of no other individual was, of the three concepts and clauses that came to constitute the first section of the amendment. He accepted the amalgamation of natural rights, due process, and equal protection which had become the prime constitutional adornment of the party platforms.⁴⁰⁴

This study of Congressman Bingham's background suggests, in Paul Dimond's words, that Bingham was "not a plausible candidate for framing a constitutional amendment using code words with the narrow meanings suggested by Berger."⁴⁰⁵ This is not, however, because of contradictory claims that Bingham was an advanced abolitionist and Negrophobic,⁴⁰⁶ nor because

397. The N.Y. Times, Jan. 16, 1860, at 1, col. 1, *quoted in* C. Riggs, *supra* note 12, at 296 n.32.

398. This book was revised and re-issued in 1965 under the title *Equal Under Law*.

399. *Id.* at 145.

400. *Id.*

401. *Id.*

402. *Id.* According to tenBroek, Bingham's speeches "were the constitutional heritage of a quarter of a century of abolitionism." *Id.*

403. *Id.*

404. *Id.*; see also Graham, *The Early Anti-Slavery Backgrounds of the Fourteenth Amendment, Part 1: Genesis, 1833-1835*, 1950 WIS. L. REV. 479.

405. Dimond, *supra* note 7, at 482.

406. The charge of racism is not necessarily inconsistent with being an abolitionist. It was certainly not unusual to find someone whose antislavery views were motivated by a desire to prevent the spread of "slave power" and to protect white workers from competition rather than any solicitude for the victims of slavery. Further, even within total abolitionist circles, the prevalence of racism varied. For example, it has been said that many of Ohio's antislavery leaders believed in the biological inferiority of blacks and that often their antislavery positions "could be traced as much to dislike for the Negro as to benevolence." R. O'Dell, *supra* note 248, at 57. For early examples of this attitude see F. WEISENBURGER, *supra* note 363, at 364-65, 378-79.

Further, having reviewed Berger's chapter on this subject, I am not sure that Professor Dimond is correct in attributing to Berger a claim that Bingham himself was motivated by antagonism towards blacks. Rather, as I interpret that section, Berger argues that Bingham was a practical politician who would not have advanced his own view upon the subject if they

of charges that Bingham was "an incurably muddle-headed thinker."⁴⁰⁷ Rather, it is because additional biographical research suggests that Bingham had a strong antislavery and abolitionist background. Whether Bingham's "early moral fervors [were] diluted by political realities," as suggested by Berger,⁴⁰⁸ or his principles compromised to accommodate his audience, as suggested by Dimond,⁴⁰⁹ or whether he remained true to his antislavery and abolitionist background is a matter left for another study.

were unacceptable to a racially motivated majority. Berger denies accusing Bingham himself of being "Negrophobic." Berger, *supra* note 42, at 286-87.

Berger's reliance upon David Donald's *Politics of Reconstruction* (1965), cited in R. BERGER, *supra* note 9, at 234 n.22, may be misplaced, because more recent scholarship suggests that this was not the case. See Swift, *John A. Bingham and Reconstruction: The Dilemma of a Moderate*, 77 OHIO HIST. 76 (1968).

407. The characterization is Dimond's, *supra* note 7, at 482, but it is an accurate summary of Fairman's views. C. FAIRMAN, *supra* note 254, at 462.

408. R. BERGER, *supra* note 9, at 243.

409. Dimond, *supra* note 7, at 482.

