

OHIO VALLEY HISTORY

Volume 6, Number 1, Spring 2006

A Journal of the History and Culture of the Ohio Valley and the Upper South, published in Cincinnati, Ohio, and Louisville, Kentucky, by Cincinnati Museum Center and The Filson Historical Society.

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Cover: Faculty
and students of
Transylvania
University, ca. 1871.
The Filson Historical
Society

Contributors

EMIL POCOCK is Professor of History and American Studies at Eastern Connecticut State University in Willimantic, Connecticut. He has previously published articles about the early Ohio Valley in the *Journal of the Early Republic* and the *Indiana Magazine of History*.

JACK S. BLOCKER, JR. is Professor of History, Huron University College, at the University of Western Ontario, in London, Ontario, Canada. He has authored or edited numerous books. He is currently completing a study of African American migration and urbanization in the Lower Midwest between the Civil War and the Great Depression.

JAMES C. KLOTTER is Professor of History at Georgetown College and the State Historian of Kentucky. He is the author of numerous books on Kentucky history.

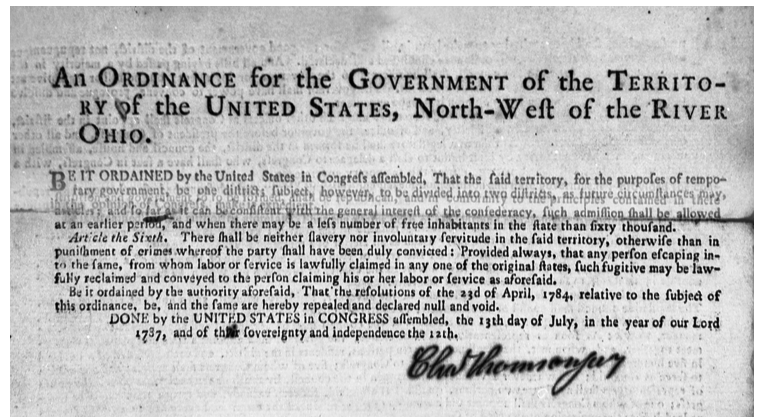
Slavery and Freedom in the Early Republic:

Robert Patterson's Slaves in Kentucky and Ohio, 1804-1819

EMIL POCKOCK

Freedom and slavery in the early American republic were not absolute conditions separated by an immutable line in law or practice, but rather were the extremes along a continuum in the status of persons. Legal restraints on their respective liberties, civil rights, and political privileges largely defined the status of free men, women and children, apprentices, indentured servants, slaves, and other classes of persons. Ambiguities in territorial, federal, and state statutes, inconsistent interpretation of the laws and their enforcement, and a wide variation in local practices blurred rather than clarified these status boundaries. Persons of African descent felt such uncertainties most especially, because only they lived along the entire continuum from freedom to slavery, and their status could change dramatically with time, place, and circumstance.

These issues played out most clearly in the Ohio Valley during the early-nineteenth century. The Ohio River served as the powerful, if symbolic, dividing line between slavery and freedom, yet that unmistakable natural feature, so neatly drawn as a line on a map and imbedded in the imaginations of generations of slaves and freemen, also united the Valley, its people, and its attitudes. Slavery and other forms of involuntary servitude had existed on both sides of the river since the first European settlements. Slaves brought by French traders and settlers remained in the Northwest Territory when it was created in 1787, and despite the declaration in the Northwest Ordinance that “forbade slavery forever” north of the Ohio River, the territorial government made little effort to manumit them. Tolerated as well were the slaves that Virginia and Kentucky settlers brought across the river, often under the guise of indentured servants or coerced in other ways. Considerable sympathy for slavery was well entrenched in Ohio, Indiana, and Illinois when these three states were carved out of the Northwest Territory



Article Six of the Northwest Ordinance of 1787 prohibited slavery and involuntary servitude. Cincinnati Museum Center at Union Terminal, Cincinnati Historical Society Library

between 1803 and 1818. Efforts to legalize slavery failed by close margins in each of the states' constitutional conventions, but all three states subsequently enacted statutes that consciously created gradations in status between slavery and freedom. They legalized indentured servitude, stripped free blacks of many civil rights, and allowed slaves in transit to remain in their states for up to a year. The Fugitive Slave Act of 1793 also made it clear that slaves who crossed the river did not become free persons just because they entered the domain of a nominally free state.¹



*Colonel Robert Patterson.
Cincinnati Museum
Center at Union Terminal,
Cincinnati Historical
Society Library*

The untested relationships among the laws, their enforcement, and local practices created a considerable amount of uncertainty that black and white residents exploited for their own ends. White settlers held black adults and children, some of whom were former slaves, to involuntary labor north of the Ohio River as indentured servants. Other slaves brought across the river may have been coerced to remain under the control of their owners under threat of being sent back to a slave state. Some slaves may have voluntarily acquiesced in this arrangement by concluding that a life of labor in a free state was preferable to life as a slave south of the river, even though there may have been little actual difference in their condition. Nominally, free blacks may have found some benefit in living under the protection of a white family, even if this arrangement diminished their actual freedom. Fugitives from slavery undoubtedly understood the

ambiguity and inconsistent application of the laws as well, especially in Ohio, making it possible, but risky, to reside in the state indefinitely.

A slave rescue in Dayton, Ohio, in 1806 and the convoluted series of events and court cases surrounding that incident tested the limits of the status of black people north of the Ohio River. The central character in these events was Colonel Robert Patterson, a distinguished Kentucky pioneer, entrepreneur, and public figure, who moved his household, including at least half-a-dozen slaves, to a seven-hundred-acre farm just south of Dayton two years earlier.² Although Patterson's opposition to slavery in part prompted his removal to Ohio, he was not forthright about freeing all his black servants once he arrived in the state. The various circumstances under which Patterson held black servants in Dayton and his subsequent efforts to retain control over them resulted in seven trials heard in four different state and federal courts. These cases touched on the widest range of issues concerning the status of black residents in the newly admitted free state of Ohio, including slavery, fugitive slaves, slaves visiting the state, indentured servants, and free blacks. Patterson's difficulties tested public perceptions of the boundaries between slavery and freedom early in the century and provided the first indications of the extent to which Ohio judges

and juries were willing to enforce the antislavery provisions of the new state constitution.

Although the Ohio state constitution unconditionally prohibited slavery, it permitted the indenture of free black and mulatto persons under certain conditions.³ A subsequent statute designed to enforce the constitution specified that only free blacks (in contrast to slaves) could be employed in the state, but the wording allowed slaves legally held by citizens of other states to visit for unspecified periods of time, so long as they did no useful work. The statute also outlined procedures for the recovery of fugitives, although many of its provisions duplicated those of the Fugitive Slave Act of 1793.⁴ These accommodations to slavery and indentured servitude undermined any assumption that all African Americans found in Ohio, black as well as mulatto, must necessarily be free persons, while they afforded slaveholders opportunities to bring their human property into Ohio and otherwise keep black people subservient.⁵

Patterson and others desiring to bring black servants into the state soon exploited the ambiguities and loopholes in Ohio's constitution and statutes. Patterson believed that Ohio law and public sentiment allowed him to hold his former slaves as indentured servants for limited periods of time and supported his right to return them to Kentucky and slavery if need be. He may have intended to free his slaves sometime after bringing them to the state, but he also expected that most of his black servants would voluntarily stay with him in Ohio under conditions that were not too different than he had held them in Kentucky. Similar practices in areas settled primarily by others from Kentucky and Virginia, such as the Virginia Military District surrounding Chillicothe, likely buoyed Patterson's confidence.⁶ Even though the Miami Valley attracted a mix of families from New Jersey, Pennsylvania, and Kentucky, Patterson did not anticipate serious trouble over his black servants. In the end, he was quite mistaken about the tolerance of his new neighbors, both those originally from free states and those from slave states.

Patterson's problems came to a dramatic climax in January 1806, when leading Dayton citizens prevented two of Patterson's former slaves from being forcibly returned to Kentucky. Dayton was an unlikely setting for the first slave rescue recorded in Ohio.⁷ A struggling town of fewer than twenty log cabins in early 1806, Dayton was situated precariously along the Miami River, sixty miles north of Cincinnati. Its blockhouse, hastily erected in 1799 in response to rumors of imminent attack by the Shawnee, was a visible reminder that the town remained a vulnerable outpost along the leading edge of frontier settlement. Presbyterians from northern and southern states had built a small log church two years earlier, Henry Brown kept a dry-goods store, and town proprietor Daniel C. Cooper had just put a sawmill into operation.⁸ The only place of public entertainment was a tavern run by the town's sheriff, George Newcom, located in his two-story log cabin. Newcom's Tavern was the center

of the town's social life and became even busier when the Montgomery County courts began holding their sessions in tavern rooms after Dayton was named the county's seat the previous year.⁹

Thus it may not have been so unusual that on January 30, 1806, Newcom's Tavern was filled with nearly two dozen townsmen when Dr. Andrew McCalla entered the cabin.¹⁰ This was not the first time the physician had traveled to Dayton from his home in Lexington, Kentucky. McCalla had visited the town on several occasions during the previous three years, both to visit Patterson and other friends he had known in Kentucky and to oversee the construction of a house in anticipation of his own move to Dayton. Although Patterson was in the tavern that Thursday afternoon, McCalla had not come to be sociable. He was pursuing a grimmer business accompanied by David Sharp, a professional slave catcher whom McCalla had engaged to track down and return to servitude in Kentucky a pair of alleged fugitives, Edward Page (known as Ned) and his wife, Lucy. McCalla claimed the pair on the basis of a bill of sale from Patterson, allegedly made just prior to his move to Dayton.¹¹ The intentions of McCalla and his hired companion were no surprise to anyone present, as he had publicized his reason for coming to Dayton earlier in the day, probably by posting a copy of the Fugitive Slave Act of 1793 in the tavern.¹²



Newcom's Tavern.
Pen and ink sketch by
Caroline Williams, 1955.
Cincinnati Museum
Center at Union Terminal,
Cincinnati Historical
Society Library

men of Dayton, including attorney George F. Tennery, town marshal Samuel Hopkins, and county clerk Benjamin Van Cleve, had secured the Pages' freedom by demonstrating to the satisfaction of the county's Court of Common Pleas that McCalla's friend Patterson had brought Ned Page and Lucy Page from Kentucky illegally and had been holding them as slaves on his farm outside of town. As McCalla entered the tavern, he doubtless recognized Tennery, Hopkins, Van Cleve, and others who had effected the Pages' freedom and who had since been protecting them from the possibility of re-enslavement. It was a tense moment. McCalla's companion was armed with a pistol, perhaps a normal professional precaution, but it also suggested that, if necessary, Sharp was prepared to take the Pages by force. The 1793 Fugitive Slave Act gave men like McCalla and his agent the right to seize and arrest alleged fugitives from slavery in any free state or territory. Under terms of the act, Sharp was obliged to take the Pages before a judge or local magistrate and demonstrate,

McCalla and Sharp faced a difficult task, not because the Pages were difficult to find, but because they were living under the protection of local residents. Two years earlier, several leading

by testimony or affidavit, that they were unlawful fugitives from service before he could obtain a warrant for their removal from the state.¹³ McCalla and Sharp were unlikely to find a compliant magistrate in Dayton, considering that the local court had granted the Pages their freedom in the first place. Their plan was to arrest the pair and take them before a federal district judge in Chillicothe, where they stood a better chance of a sympathetic hearing.¹⁴

McCalla and Sharp found Ned Page easily enough among those in the tavern crowd.¹⁵ Page resisted capture, but Sharp held his pistol on him and succeeded in making an arrest, but it was only temporary. A number of those present, including townsmen Hopkins, Tennery, Van Cleve, Martin Myers, Conkling Miller, and Patrick Lafferty quickly interceded and rescued Page before he was carried off, even though Sharp had turned the pistol on constable Jerome Holt, who had joined the rescuers. The tavern was in an uproar, as the participants traded threats and curses. Page was walking around the room, waving a pistol that Mathew Patton had probably given him and shouting that he would defend himself.¹⁶ Patton and Van Cleve encouraged him by reminding all present that Ned was a free man. If McCalla was chagrined by this reversal, Sharp must have realized that he was suddenly in a precarious situation.

Sharp tried to extricate himself the best he could by coolly announcing that he would be on his way, if no one objected. Hopkins said he should not leave and offered to prevent the slave catcher from doing so. Others backed him up with their shouts. Sharp challenged Hopkins's authority to detain him and demanded to know if any magistrates were present. Hopkins, along with justices of the peace Christopher Curtner and Joseph Rayburn then stepped forward and replied that they were all magistrates. Sharp attempted to explain himself, but he became nervous and hesitant as he fumbled with some papers that he wanted to read. These were no doubt sworn affidavits that Ned Page and Lucy Page were the fugitive slaves of Andrew McCalla of Kentucky and constituted the evidence Sharp needed to present before a magistrate in order to obtain the necessary warrant to return them to Kentucky. He knew these Dayton magistrates would have scorned his papers and application to remove the Pages, but there seemed no other way he could defend his actions and extricate himself from an uncomfortable situation. As he expected, the Dayton magistrates were not interested in hearing Sharp's explanation or reading his documents; they indeed considered the Pages free persons under Ohio law.

In the midst of the uproar, Hopkins, Curtner, and Rayburn retired to a back room to consider the matter, while the townsmen kept Sharp from leaving. When the three magistrates reappeared, they summarily declared that Sharp was under arrest for breach of peace and would be immediately bound over for trial. Agitated, the slave catcher was not about to submit to arrest and detention while awaiting trial in a hostile town. Angry shouts and curses again

flew back and forth among the parties before Cooper defused the crisis by proposing that Patterson and David Reid, as McCalla's friends, pledge bonds of five hundred dollars each as security for Sharp's appearance during the April session of the supreme court. Patterson and Reid readily agreed to sign the papers Cooper had drawn up. As there was no further reason for holding Sharp, he left the tavern and was soon on his way back to Kentucky—without Ned Page or Lucy Page. During the months that followed, McCalla struck back at the rescuers. In March, he filed two civil suits in federal district court charging that ten Dayton men unlawfully obstructed him and his agent from arresting two fugitive slaves.¹⁷

The drama at Newcom's Tavern was not an isolated incident, but was rather the climax in a series of events that began in 1804 as a consequence of Patterson's settling near Dayton with his former slaves. Patterson's decision to move to Ohio came in the wake of the ratification of Kentucky's second constitution in 1799, which failed to include a scheme for gradual emancipation. Although a slave owner like most other successful Kentuckians, Patterson united with nineteen Presbyterians and other churchmen (half of whom owned slaves) to promote conditional emancipation during the 1798 campaign by working to elect delegates to a second constitutional convention. That effort failed when proslavery men won a majority of the convention seats. The resulting constitution strengthened the right of Kentucky citizens to own slaves and made it impossible for the state legislature to pass a general emancipation law.¹⁸ Disillusioned by this failure, Patterson may have conceived that the territory north of the Ohio River might be a more congenial environment for gradual emancipation, at least so far as his own slaves and his conscience were concerned.

Patterson already had several connections with the Miami Valley in southwestern Ohio, which made it an obvious place to search for a new home. He had seen much of the area during his campaigns as a Kentucky militiaman in the 1770s and, a decade later, he became one of the original proprietors and founders of Cincinnati. Toward the end of the century, several of Patterson's friends and relatives contemplated moving north of the Ohio River and made scouting trips into the Miami Valley. Two of his cousins, John Patterson and James Patterson, sold their Kentucky holdings in 1798 and established themselves on Beaver Creek, just east of Dayton. Patterson's friend William Nisbet was considering such a move himself in 1799, when the two men, accompanied by black servants, visited Dayton and the Patterson cousins on Beaver Creek. By 1801, David Reid, Henry Brown, William King, David Purviance, and others whom Patterson knew in Kentucky had settled in the Dayton area or were planning to do so.¹⁹

In 1802, Patterson was back in Ohio looking for suitable property. He made his cousin's home on Beaver Creek a base while he scouted along the Little

Miami and eventually purchased a potential mill site at Clifton Falls, about ten miles east of Dayton. Patterson returned to Clifton Falls in the spring of 1803, accompanied as usual by one of his black servants. He built a mill on his new property and visited friends and relatives in nearby Dayton.²⁰ While in Dayton, Patterson heard that town proprietor Cooper wanted to sell his farm, located just south of the town. After viewing the seven-hundred-acre property, with its house, mill, distillery, and other improvements, Patterson decided to buy it and move his family to Dayton rather than to the relatively undeveloped site at Clifton Falls. The purchase agreement made that June called for the transfer to take place more than a year later, after Cooper had taken in the harvest and had completed building a new house in town.²¹ Patterson's plans probably encouraged his friend McCalla to buy a town lot from Cooper about the same time, in anticipation of relocating to Dayton himself.²² McCalla left two of his slaves behind in Dayton to provide labor for building a house and to assist in settling. He intended to keep them there for a while and free them later, much as Patterson may have been contemplating for his own slaves.²³ Both men had reason to believe that this was a relatively safe and acceptable practice. Many Virginia and Kentucky migrants had brought their former slaves to Ohio without incident, sometimes held by indentures, and the practice was not unknown in Dayton.²⁴

Although Virginians and Kentuckians had found it relatively easy to bring their slaves into the Miami Valley as indentured servants, that became nearly impossible after Ohio's Constitution went into effect in March 1803. Unlike the provisions of the 1787 Northwest Ordinance, which were widely regarded to prohibit only the further introduction of slaves and made no mention of indentured servants,²⁵ the Ohio Constitution prohibited slavery and the indenture of any "negro or mulatto" adult, save those made with free persons in Ohio for terms not exceeding one year. Children could be held as apprentices for much longer terms: girls until they were eighteen years old and boys until they were twenty-one.²⁶ McCalla and Patterson may not have appreciated the new limitations on indentures and they certainly misjudged the resolve of some influential Dayton residents, including Van Cleve and Judge Isaac Spinning, both of whom had previously published their opposition to slavery.²⁷ The objections of Dayton residents probably convinced McCalla that it was no longer prudent to leave his slaves in Dayton, and he soon made arrangements to bring them back to Kentucky. In July 1803, he wrote a letter to Patterson, who was in Dayton at the time negotiating his own move, about his two servants and requested that he ask their common friend Reid "to get the writ," an apparent allusion to a warrant granted under provisions of the 1793 Fugitive Slave Act needed to remove his slaves from the state.²⁸

This incident may have made Patterson consider more carefully what he was going to do with his own slaves.²⁹ He was unwilling to sell his black

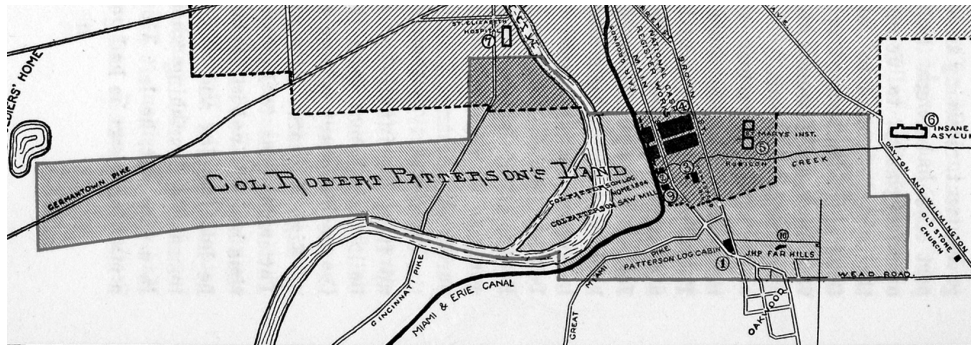
servants and leave them behind in Kentucky, because that would have left them in perpetual bondage. Patterson was probably equally reluctant to free his slaves immediately, even if that was practical in Kentucky,³⁰ because he believed that responsible emancipation required a period of preparation and education. Economic considerations may have factored as well. Patterson's slaves represented a substantial investment at a time when he was hard-pressed and needed their labor on his farm near Dayton. Patterson was likely sincere in wishing to emancipate his slaves sometime in the future,³¹ but he probably rationalized delaying that time until they were sufficiently prepared. In the meantime, he wanted still to have their labor, but how, if slavery and out-of-state indentures were prohibited in Ohio?

Patterson considered several possibilities, including some designed to evade Ohio's laws. If he felt confident about the loyalty of his slaves, he could bring them to Ohio with the understanding that they would continue to work in his household for some period of time in exchange for the freedom that Ohio residence would confer. This was not an unreasonable scenario, as other southern migrants expected that their freed slaves would continue to work for them voluntarily. Patterson may have even promised his servants that they could remain with him for their entire lives, if they wished, and he would take care of them in their old age.³² Many slaves may have found such proposals attractive alternatives to perpetual slavery, especially if they thought there was little danger of being taken back to Kentucky or some other slave state and sold. Patterson would have been quite comfortable with this informal paternalism, as it would have provided him with the labor he needed while validating his own benevolence.

Patterson also believed he could indenture his slaves for up to a year at a time and then move them to Ohio legally, an attractive option if he feared that any of his servants might attempt to escape his control once he left Kentucky.³³ This would preserve a legal claim on their services and provide a means to threaten them with return to slavery in Kentucky, if necessary. Although Patterson was mistaken about the terms under which he could accomplish this and still be in conformity with Ohio law, it did not dissuade him from making the attempt. Of course, there were other dubious ways to evade legal obstacles. In a conversation with McCalla and other Lexington friends prior to his own move, Patterson discussed a more devious scheme by which owners could take their slaves into Ohio with little risk. A man contemplating such a move could get a friend to accept a bill of sale for the slaves he wanted to take to Ohio. If any trouble about them should arise, he would maintain that they were runaways he was holding for his Kentucky friend, who could reclaim them as fugitives.³⁴ In the end, Patterson probably did not conceive a clear course of action, but rather reacted to events as they unfolded. He knew his prospective neighbors would accept the presence of blacks in his household if they were free persons

or held under legal indenture, but they would probably object to any appearance of involuntary labor. There is no evidence that Patterson manumitted his slaves prior to leaving Kentucky, but that was not necessary in order to remove them. Once he brought his slaves to Dayton, Patterson could have simply registered them all as free persons with the county court, for example, but he failed to do that consistently either. Patterson was probably content to leave the precise status of his former slaves indefinite and let matters take their course. If challenged, Patterson had left open several options, including the possibility of taking his servants back to Kentucky.

The Pattersons began their preparations for moving to their new farm south of Dayton during the spring of 1804. That April, Patterson, his wife Elizabeth, their friend Mathew Patton, and two Patterson slaves, Ned Page and Old Will, brought a wagonload of furniture up to Dayton. Ned Page drove the wagon and returned with the Pattersons soon after, but



Will remained on Cooper's farm. The forty-year-old Will was an experienced mill hand and Patterson wanted him to become familiar with the Cooper machinery prior to the property transfer in the fall. Will lived in a hut he built for himself in the nearby woods while he worked in the mills.³⁵ Patterson must have had reason to trust that he would work willingly and not run away, for he did not free his slave Will prior to leaving Kentucky or on arrival in Ohio. No specific provisions for manumission yet existed in Ohio law, nor was there any statutory requirement prior to June 1804 that black or mulatto residents have documents attesting to their freedom. Officials had routinely allowed slaves to travel through the Northwest Territory and to remain for limited periods, but no state legislation yet clarified these points.³⁶ Patterson's failure to take positive steps to manumit Will and the lapses in Ohio's laws kept his status as a free man in some doubt. Patterson left Will in Dayton, intending that he should become a permanent resident, thus he was clearly not a fugitive nor a slave in transit. The only possibility that remained under the Ohio constitution was that Will was a free man, yet such *de facto* freedom was tenuous and easily challengeable.

Townsmen used every opportunity to talk with Will about his freedom after Patterson returned to Lexington. Will made up his mind to take definitive action soon after Ohio's statute regulating black and mulatto persons went into

The dark shaded area shows Robert Patterson's land holdings near Dayton with the location of his home (2) and his saw mill (9). Portion of a map from The Patterson Log Cabin by Charlotte Reeve Conover, 1906. Cincinnati Museum Center at Union Terminal, Cincinnati Historical Society Library

effect on June 1. The law required that all black and mulatto persons residing within the state must register with a county clerk, who would then issue certificates of freedom. When Will appeared before the Montgomery County Court of Common Pleas on June 4, court clerk Van Cleve wrote simply in the newly opened Record of Black and Mulatto Persons that “William Patterson a free black man of about forty years old entered his name of record.”³⁷ His manner of entering his name suggests that Will felt comfortable identifying himself with his former owner and that no ill feelings existed between them. Patterson made no subsequent effort to challenge Will’s freedom.³⁸ Registration also protected Patterson from prosecution, because the statute further provided that anyone who employed a black or mulatto person without a certificate of freedom was subject to a fine of up to fifty dollars, thus indirectly enforcing the state constitution’s prohibition of slavery.

During July 1804, Patterson sent two more wagonloads of household goods up to Dayton accompanied by additional slaves, who may have been among those whose freedom was recorded in the Record of Black and Mulatto Persons.³⁹ By fall, Patterson was ready to bring up his family, the remaining slaves, additional household goods, and the livestock. The traveling party that started off on Monday morning, October 29, was large and unwieldy, consisting of Patterson, his wife Elizabeth Lindsay Patterson, and eight children ranging in age from two to sixteen years old. Accompanying the family were Patterson’s slaves, Edward and Lucy Page. In addition, Elizabeth Patterson’s brother, William Lindsay, provided assistance with his eighteen-year-old slave, Moses, who drove one of the two wagons loaded with furniture, tents, and two weeks worth of provisions for the journey. The adults and older children were mounted on horses, while the younger ones rode in the wagons or walked, as they liked. The Pages drove a herd of cows and oxen along the road after the wagons, and several packhorses completed the entourage.⁴⁰

Likely, Patterson brought the Pages last because he wanted them under his constant supervision. Unlike his other slaves, Ned and Lucy Page were unmanageable,⁴¹ and Patterson could not be confident they would remain in his service voluntarily. After he failed to get them to sign one-year indentures before leaving Kentucky, he consulted with his friend McCalla about what to do. Patterson was reluctant to sell the Pages if that meant perpetual slavery for them, so he proposed that McCalla should buy the slaves from him at below market price and then hire them out, applying their wages toward the purchase price. In that way, Patterson would be free of the troublesome couple who, in turn, would at least have an opportunity to earn their eventual freedom. McCalla declined the proposition, as he had had bad experiences with hiring out slaves, and proposed only a *bona fide* sale without conditions,⁴² leaving Patterson with only one choice. He took the chance of bringing the Pages with him to Ohio, even though he suspected that if the opportunity presented

itself they would run away.

Progress was slow along the ninety-mile route north to Covington, situated on the south side of the Ohio River opposite Cincinnati. The travelers averaged about twelve miles per day along a poor road, paced by the livestock and the difficulties of managing the wagons, pack-horses, and a half-dozen mounted riders as one group. The Pattersons, Lindsay, and their slaves camped out in tents and cooked from their provisions when no suitable inn or tavern was available along the way. On Sunday, November 4, the company reached Covington and camped prior to crossing the Ohio River. The next morning, a ferry transported the wagons and horses to the Ohio side, while the livestock were forced to swim across the river next to the boat. After resting for the night in Cincinnati's Blue Goose Inn, they started on the second leg of the journey, the sixty-mile trek up to Dayton along an even rougher road. Patterson, his wife, their thirteen-year-old son Francis, and Jefferson, the youngest child, went on ahead and reached their new home three days later. Patterson then retraced his route and found the wagons and the cattle coming up slowly, about half way from Cincinnati. Accompanying them was William King, one of Patterson's Kentucky friends who then lived along the Cincinnati-Dayton road.⁴³ By the end of the week, all arrived safely at the Patterson farm. Lindsay returned to Lexington, leaving behind his team and wagon in the care of his slave, Moses, who would drive the wagon back to Kentucky when convenient.

The new Patterson homestead spread eastward from the Miami River, two miles south of Dayton. It was already a substantial place, thanks to the improvements that the former owner Cooper had made over the previous half-dozen years. On a hill a half-mile east of the river stood a two-story log house, with three rooms downstairs and four rooms above, a separate kitchen, smoke house, and cabins for the servants and hired help. Around the homestead were extensive orchards, fields cleared out of the surrounding forest for pasture and for planting corn and other crops, and beyond a stand of sugar maples. The distillery was operating, and two mills, one saw and the other grain, stood ready along a stream that flowed through the property and emptied into the Miami River.⁴⁴

Patterson's pronounced need for labor that first winter was compounded by sickness that pervaded the family.⁴⁵ The house had to be put in order and a regime of domestic work organized for the family of ten, which included four children younger than eight years old. Elizabeth Patterson, however, had a good deal of help. In addition to the two older girls, two other daughters, Elizabeth and Catherine (sixteen and eleven years respectively), and several black servants worked about the house, including thirty-year old Sarah Ball, who served as Elizabeth Patterson's personal servant. The Pages lived in a furnished basement. Lucy washed clothes, worked in the kitchen, and assisted in other domestic chores along with several other black servants, while Ned

chopped wood and tended the fires in the kitchen, in addition to other jobs he did for Patterson related to the sawmill.⁴⁶

Patterson was busy milling flour from the wheat that neighboring farmers brought to his farm, which he called Rubicon, and he had the sawmill in operation as soon as the ground became hard enough to skid logs behind teams of six or eight oxen. Such labor-intensive activities employed several black servants, and Will had been working in the mill and living in a hut in the woods ever since Patterson brought him up from Lexington the previous spring.⁴⁷ Through the fall and winter, Ned Page drove wagon loads of lumber and other building materials Patterson was supplying for the construction of two houses in Dayton, one for himself and the other for his friend McCalla. Town residents sometimes saw Ned helping to raise the houses as well.⁴⁸ Moses remained at Rubicon farm into the winter with Lindsay's wagon and team. Poor weather may have delayed his return trip to Kentucky, but Patterson also had reason for detaining Lindsay's slave, as he certainly had use for an extra team and wagon.⁴⁹ Moses undoubtedly drove the team for Patterson, among other work he may have performed around the farm or mills.⁵⁰ Patterson also employed free white labor when he could, but hired help was difficult to find on the frontier and cash was scarce. Robert McCormick worked at Rubicon farm and lived in the distillery house during the winter. Patterson also apprenticed Thomas McBarny as a gardener for two years, but it is unclear how many other hired men and boys worked for Patterson.⁵¹

Sometime during that fall or winter, Sarah Ball's name appeared in the Record of Black and Mulatto Persons as a servant indentured to Patterson from Andrew Wood, then reassigned to three other men in turn.⁵² Her entry implied that she was a free person in Ohio when her contract was first made, but the circumstances of her indenture and arrival in Dayton were unclear. In any event, Ball became dissatisfied working in the Patterson household and wanted different employment. Patterson may have insisted on an indenture as a condition of her leaving, especially if he sought compensation for her lost labor. Whatever the circumstances of her arrival in Ohio and her indenture, Ball was duly registered as a free person, even though her labor could be bought and sold for at least a year. Hers was an unusual case, as Patterson did not otherwise make use of indentures as a means of controlling his black servants, but other Dayton residents held black adults and children as indentured servants at least through the 1820s.⁵³

Dayton's citizens raised no objection to the indentured servant Ball, nor did they remonstrate against any of the recorded free blacks working in the Patterson household, but they were unwilling to tolerate the continued presence of Moses, the Pages, and possibly other blacks without clarification of their status. In January 1805, several Dayton men encouraged Moses and two of Patterson's wood-choppers to leave the farm and strike out for themselves.

With the help of attorneys George F. Tennery and Richard S. Thomas, on February 7 Moses swore out an affidavit before the justice of the peace, John Folkerth, that he “has been for a long time past restrained of his liberty and held to service as a slave by a certain Col. Patterson of said County, who intends shortly to send him to Kentucky where he is to be sold for life as a slave.”⁵⁴

The Court of Common Pleas immediately granted a writ of *habeas corpus* returnable by Robert Patterson. Two days later, Patterson stated before the court that he was not detaining Moses or holding him as a slave. He explained that he had contracted with William Lindsay of Kentucky to haul a load of furniture to his farm near Dayton, and as Lindsay’s slave, Moses had arrived with the team and wagon in November and had since waited at the Patterson farm

for favorable weather before returning home. Isaac Spinning and the other three judges of the court determined that same day that Patterson had not detained Moses as alleged, but they did not record their reasons.⁵⁵ This opened the way for Moses’s return to Kentucky. In response to a letter Patterson had sent his brother-in-law, Lindsay arrived soon after with several horses. He found Moses, took him away in the night without troubling himself about legal formalities, and crossed successfully back into Kentucky.⁵⁶



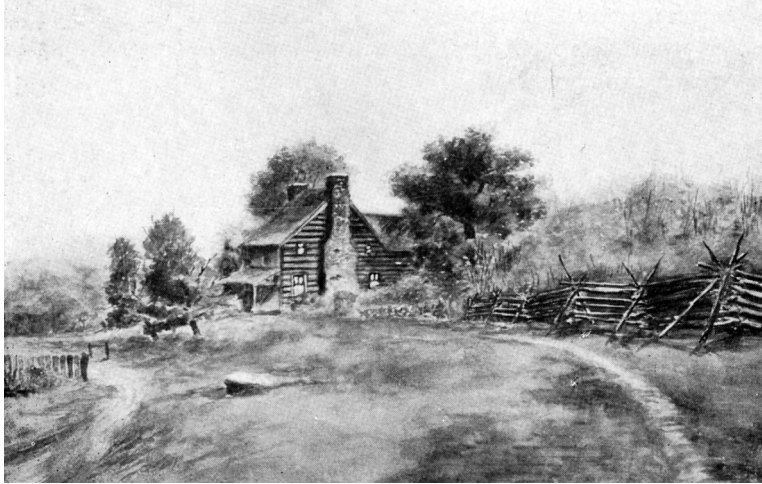
Map of the Northern Parts of the United States, Abraham Bradley, Jr., 1797. Cincinnati Museum Center at Union Terminal, Cincinnati Historical Society Library

The context of the case suggests that the court based its decision on the presumption that Moses was a slave legally held by a citizen of Kentucky and that his temporary presence in Ohio on an errand for his Kentucky master did not violate Ohio laws. While Patterson’s story may have been sufficient to answer the writ of *habeas corpus*, even though Moses had lived for three months at Rubicon farm and had done work on Patterson’s behalf, the judges may have simply found the point moot, as Moses had left Patterson’s household prior to filing his complaint and was no longer restrained, if he had ever been. In either case, Moses could not have been satisfied with a narrow ruling based on *habeas corpus*, as he undoubtedly hoped the court would declare that he was a free person and order his name recorded in the Record of Black and Mulatto Persons, like several of Patterson’s former slaves. Patterson and Lindsay were both satisfied with the outcome, as the court did not find that Patterson had illegally held Moses against his will and Lindsay recovered his slave.

That was hardly the end of Patterson’s problems. On February 6, Ned

and Lucy Page, also represented by attorneys Tennery and Thomas, swore out similar affidavits that Patterson was also holding them to servitude against their wills. Dayton marshal Samuel Hopkins corroborated the complaint and added that he heard Patterson claim “he would shortly send the said Edward and Lucy to Doctor McCalla in Kentucky to be held by him as slaves.” This was a much more difficult case to defend because the Pages had undeniably

been Patterson’s property in Kentucky. When Patterson appeared before the court on February 9 to answer the charges, he had already prepared his story. He claimed that the Pages had absconded from his service “in which they were hirelings for one year on a contract with Doctor Andrew McCalla of Lexington and State of Kentucky who claimed them as his property under the laws of said State.” Patterson testified that he had sold the Pages to McCalla on November 3, just prior to leaving Kentucky, and then contracted



Robert Patterson’s first home near Dayton from A Memoir with Letters of Mrs. Horatio G. Phillips, 1914. Cincinnati Museum Center at Union Terminal, Cincinnati Historical Society Library

with McCalla for their labor as indentured servants for one year.⁵⁷

Patterson offered this account of events as a defense against the charge of slaveholding and to leave the way open for McCalla to recover the Pages as his property. In doing so, Patterson did not realize that he had subverted his own cause. Indentures of black and mulatto adults could be made in Ohio only with free persons, but Patterson asserted in writing that the Pages were McCalla’s slaves when he made the indentures before leaving Kentucky. As Patterson had admitting holding the Pages to labor, the court returned the only decision possible three days later: it declared that the Pages were “unjustly detained in slavery contrary to the laws and constitution of the state of Ohio.” The judges immediately liberated the Pages and court clerk Van Cleve entered their names into the county’s Record of Black and Mulatto Persons.⁵⁸ The couple remained in Dayton for at least two years, during which Ned Page even voted in a town election.⁵⁹ Where they lived is uncertain. Mathew Patton, who was among those who encouraged the Pages to defend themselves, at one point offered them a room,⁶⁰ and other Dayton residents protected the Pages from the possibility of being forcibly returned to slavery in Kentucky.

Patterson for his part did not concede the loss of his slaves. He twice applied to Judge Spinning for “a pass,” the warrant necessary under the Fugitive Slave Act that would allow the Pages to be carried back to Kentucky and slavery, but Spinning refused each time to grant it.⁶¹ During the summer of

1805, Patterson conceived a plan to return the Pages to Kentucky by force, presumably for delivery to McCalla.⁶² Patterson recruited two Kentucky friends, Henry Lindsay and Alexander McConnell, to assist in the scheme. McConnell had settled in Butler County, north of Cincinnati, about the same time the Pattersons moved to Dayton, and he apparently knew where to find the Pages.⁶³ On August 20, McConnell led Patterson, his fourteen-year-old son, Francis, and Henry Lindsay to where locals had concealed the Pages and attempted to seize them, but something went awry. Instead of capturing the pair and taking them back to Kentucky, Robert Patterson and his son were arrested for assault.

On August 27, a Montgomery County grand jury, which included Patterson's friends Reid, King, and James Nisbet,⁶⁴ indicted Robert and Francis Patterson on charges of assaulting Ned Page with force of arms and attempting to remove him, a free black man, from the state without legal authority.⁶⁵ In November, Patterson won a request for a change of venue and the case was continued to the following year. In November 1807, the judges of the supreme court in neighboring Warren County summarily quashed the charges and released the Pattersons from their bonds.⁶⁶ The official ruling did not include their reasons, but Page, whose testimony would have been crucial to the state's case, was not present in court. He probably left the area soon after the incident at Newcom's Tavern the previous January, but he may have been excluded as a witness by the terms of an 1807 statute that prohibited the testimony of black and mulatto persons in any court case in which either party was white.⁶⁷

After Patterson twice failed to recover the Pages, he may have induced McCalla to devise a less risky attempt under terms of the Fugitive Slave Act. McCalla had a more plausible legal claim to his former slaves because of his alleged purchase from Patterson, and so he could make a case that they were fugitives from his service in Kentucky. Thus in January 1806 McCalla came to Dayton with the slave catcher Sharp and the necessary legal papers to recover the alleged runaways under the protection of federal law. When Dayton residents stymied McCalla and Sharp in their attempt to arrest Ned Page in Newcom's Tavern, McCalla went home empty handed and Sharp was under bond to reappear the following spring before the supreme court in Montgomery County.

In April, the county's grand jury brought in two indictments against Sharp, the first for assault on Holt with a pistol and intent to murder, and the second for assault on Page without legal warrant and attempting to remove him from the state. Sharp pleaded not guilty in both instances in August and requested a change of venue in November, arguing "there was a general prejudice against him in Montgomery County."⁶⁸ The cases were continued before the supreme court in Warren County in November 1807, at about the time the same court dismissed the Pattersons' case. The jury found Sharp not

guilty in assaulting Holt with a loaded pistol. Its reasons are unclear, owing to the absence of any record of testimony. If the jury concluded that Sharp believed he was carrying out a legitimate arrest under the Fugitive Slave Act, it may have given him latitude to use force in carrying out his purpose. As to the second indictment of assault against Page, the judges quashed it before it reached the jury, perhaps because key issues that exonerated Sharp's actions had been resolved in the Holt case.

Incredibly, McCalla did not give up easily. He filed two suits against the Dayton rescuers the following March 13 in federal district court in Chillicothe, alleging in one that Dayton magistrates Curtner, Cooper, and Rayburn had obstructed his and his agent Sharp's attempts to arrest the Pages, whom he claimed were fugitives from his labor in Kentucky, and in the other that Hopkins and six other men also obstructed him and his agent from the lawful arrest of the two fugitives. He sought to recover five hundred dollars in each case by actions of debt, as provided by the act, and an additional one hundred dollars in damages from Hopkins and the six others.⁶⁹ The defendants replied to the charges in June, through their attorney Tennery, that they owed McCalla nothing. They did not hinder Sharp nor rescue Ned and Lucy Page under the terms of the act because the Montgomery County Court of Common Pleas had declared the Pages to be free persons. The defendants argued further that because Patterson's bill of sale was fraudulent, the couple was never McCalla's property.⁷⁰

The parties to the suits did not disagree about the events that took place on January 30 in Newcom's Tavern. The key issue was whether or not McCalla had a lawful claim to the Pages and was thus justified in recovering them by force. McCalla attempted to establish that the pair was his property and fugitive from his service, who went to Ohio without his knowledge or consent. Patterson and his wife offered likely perjured and surely contradictory testimony that was at odds with the accounts of every other witness.⁷¹ Patterson maintained that he sold the Pages to McCalla before he left Kentucky and produced a bill of sale dated November 3, 1804, in evidence. He also retracted a sworn, signed statement from 1806 claiming that he had subsequently hired the Pages from McCalla as indentured servants. Certainly Patterson abandoned this line after he became convinced that it was illegal, but also because it would have been an admission that McCalla knew the servants had gone to Ohio with Patterson and thus could not have been fugitives from his service. Despite close questioning by defense attorneys, Patterson and his wife staunchly maintained that the Pages did not accompany them on their move to Dayton, were never under Patterson's control after they left Kentucky, and did not work or live on Rubicon farm in Dayton. The defendants focused their efforts on demonstrating that the Pages were never the property of McCalla nor did he have any legitimate claims to their services.⁷² In response, Patterson

gave inconsistent answers to questions about when and where he had written the bill of sale; in fact, he could not say how it was delivered to McCalla or when McCalla took possession of the Pages, if he ever did.⁷³

Despite the damaging testimony, McCalla must have been encouraged when the jury in *McCalla v. Hopkins et al.* found for him in June 1809, despite the judge having overruled the verdict on appeal of the defense on several technical points.⁷⁴ The jury in *McCalla v. Curtner et al.* stood deadlocked nine to three for the defendants in October 1809, forcing the trial's continuance with a new jury.⁷⁵ McCalla went ahead with renewed attempts to gain control of the Pages. In July 1810, he sent David Reid a power of attorney to act on his behalf in recovering the Pages, although he knew they had probably left Dayton several years earlier and probably could not be found.⁷⁶

McCalla's suits dragged on for nearly a decade. Three additional juries heard the *Hopkins* case in 1809, 1812, and 1815 without considering a verdict. The parallel *Curtner* trial continued until 1815, when the court allowed attorneys for both cases to take depositions before proceeding further.⁷⁷ This belated ruling suggests that the difficulties in assembling all the witnesses at one time contributed to the repeated delays, but neither side seemed eager for the trials to come to a conclusion.⁷⁸ Finally in September 1816, the fifth jury in *McCalla v. Hopkins et al.* upheld the plaintiff's claims; three years later, a jury in *McCalla v. Curtner et al.* found for the defendants. The inconsistent verdicts did little to clarify underlying issues, however irrelevant they might have been. After a decade of litigation, with several of the defendants dead or separated from the suits,⁷⁹ and with the Pages safely beyond recapture, the five-hundred-dollar judgment in one of the cases must have been little satisfaction to McCalla or Patterson.

Patterson's other former slaves remained in Dayton for many years. Will worked at the mills until he found employment with the army during the War of 1812, and a number of others lived in cabins on the Rubicon farm as free persons until their deaths.⁸⁰ Despite these losses, Patterson's personal fortunes gradually increased over this period. By the outbreak of the war, he had augmented his landholdings from seven hundred to 1,840 acres, on which he raised horses, cattle, and hogs, and he expanded his manufacturing enterprises with a complex of cotton and woolen mills.⁸¹ During the war, Patterson sold meat, grain, fodder, and woolen cloth to the federal army while he served as quartermaster with the rank of colonel. A disastrous fire destroyed his grist mill, fulling mill, and carding machines in October 1815, but he quickly recovered.⁸² In the winter of 1816, Patterson built a large brick house to replace the two-story log house the family had used for the previous dozen years.⁸³ In contrast to his material success, Patterson never fully regained the stature or prestige he had once enjoyed, and his attempts to enter into public life met with failure. The congregation of the Dayton Presbyterian Church,

which had initially reprimanded him for his role in the Page cases, later made him unwelcome.⁸⁴ Newspaper articles and private letters reviled him as a slave owner during the elections of 1808 and 1810, when Patterson was discussed as a candidate for state representative from Montgomery County.⁸⁵ Most painful, the Pattersons lost several of their closest Dayton friends over the affair, including William King, Mathew Patton, and William Barber.⁸⁶

Whatever effect the slave cases had on Patterson's personal life, they revealed much about popular and legal attitudes in early Ohio concerning slavery. Efforts to reconcile servitude with post-Revolutionary notions of freedom and equality were especially crucial in Ohio, a new state unburdened with a tradition of slavery but populated by settlers whose views

were almost as diverse as those in the nation as a whole. Delegates to the 1802 constitutional convention proscribed slavery by a close vote, but there remained little agreement about the positions Ohio should take on related issues.⁸⁷ An 1804 statute provided a means of enforcing the constitution's prohibition of involuntary servi-

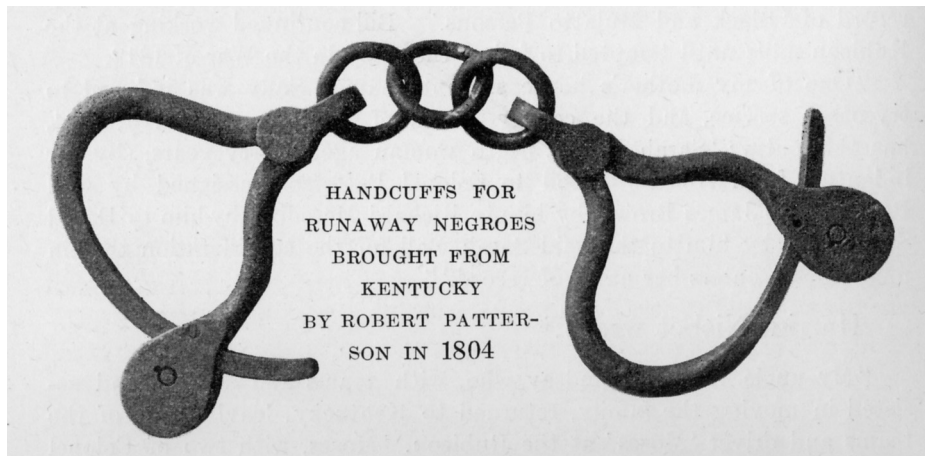


Illustration of "Handcuffs for runaway Negroes" from Concerning the Forefathers: Being a Memoir, with Personal Narrative and Letters of Two Pioneers Col. Robert Patterson and Col. John Johnston, The Paternal and Maternal Grandfathers of John Henry Patterson of Dayton, Ohio by Charlotte Reeve Conover, 1902. Cincinnati Museum Center at Union Terminal, Cincinnati Historical Society Library

tude and committed local officials to recovering fugitives, but the legislature did little otherwise to clarify the legal status of slaves temporarily in Ohio. Patterson's arrival in Dayton with his slaves tested the application of Ohio's antislavery laws. Patterson was not a cynical slave owner arrogantly intent on bringing his human property into a free state. He understood as a matter of law that he could not hold slaves permanently in Ohio, yet he expected that it would be possible to effect a gradual transition to freedom consistent with his notions of morality, social responsibility, and a conservative society ordered by status and hierarchy. Gradual emancipation might remove black persons by degrees from the legal and moral stigma of slavery, but he hoped that freedom would not destroy the networks of paternal dependence that he believed held society together. Leading Dayton men also opposed slavery, but in contrast to Patterson's gradualism, many sought immediate freedom for any adult black person who was held to labor involuntarily and contrary to the state constitution. Their opposition may also have had a moral basis, but it more clearly reflected modern liberal assumptions about law and individual freedom. They were less concerned with preserving the social structure than

with insuring that all individuals could freely exercise their natural liberty to go about their own lives as independent persons.⁸⁸ Although these two positions were destined to conflict, ironically, both challenged Ohio's commitment to enforcing its prohibition of slavery.

Consistent with popular opinion, Ohio courts took a flexible stand toward slavery and other forms of servitude. Sympathy for slavery was widespread and most residents did not support full civil and legal rights for free blacks. In the absence of specific clarifying legislation, the courts were not bound to an absolute prohibition of slaves from Ohio, even though the state's constitution might have supported such a position.⁸⁹ Moreover, no history of legal opinion or precedents existed to guide judicial decisions or suggest what might be permissible. In practice, Ohio's accommodation to the presence of slaves depended more on local opinion and judicial discretion than on recourse to specific laws. Such uncertainties left open the possibility that Patterson or anyone else might bring slaves to Ohio, at least temporarily, on terms of less than complete freedom.

Patterson had reasons to believe that Dayton residents in particular might be relatively tolerant. Many of them were from slave states and harbored some sympathy for slavery, at least to the extent of desiring good relations with neighboring states. Several Dayton residents kept African Americans as indentured servants; as such, holding persons to labor as a matter of general principle was not an issue. Patterson and other Kentuckians had visited Dayton with their slaves without incident both before and after Ohio's statehood. On several occasions during 1804, Patterson used the labor of slaves to move household goods to Dayton without raising the objections of any local men. But Dayton men drew the line when the presence of blacks held involuntarily to labor appeared to be permanent; when McCalla left two of his slaves in Dayton to help build his house, he came into direct conflict with Ohio's 1804 statute. The Dayton men applied this standard when they talked Will into registering as a free person and when they encouraged the Pages to complain to the court that they were being held to labor against their wills.

Yet Patterson's primary problems arose from his treatment of the Pages, whose freedom he did not allow and who were not eager to remain under his control in Ohio, whether informally or not. Patterson could not easily give them up, as his circumstances required their continued labor, or at least some compensation for his investment in them or in the hire of other laborers if he had to free them unconditionally. Patterson was undoubtedly impatient with their intransigence and ingratitude, and he was equally frustrated by what he must have viewed as the meddling by Dayton men in what he considered his private affairs. When summoned into court, Patterson defended his actions on grounds he thought Dayton men might accept: claiming that the Pages were indentured servants. His argument failed

to persuade the court, largely because he misunderstood Ohio's constitutional provisions concerning indentures. He and McCalla then contrived a story that made the Pages appear to be fugitives from Kentucky, a claim that state magistrates and federal courts were obliged to consider on behalf of out-of-state petitioners.⁹⁰

Dayton's antislavery men confronted frustrations of their own. Although they secured and defended the Pages' freedom, they were stymied in other cases. The courts did not consistently support their efforts to free every adult black person who appeared to be held to labor involuntarily, whatever the circumstances. Local judges and juries were not eager to embrace this more sweeping position and automatically grant liberty to all black residents who came within their jurisdiction. The courts' decisions suggested that judicial commitment to freedom extended only to insuring that no slaves remained permanently in the state. Thus they allowed slaves belonging to the citizens of other states to enter and leave Ohio with few restraints on what they might do while there, and they cooperated in returning fugitives. The case of the slave Moses demonstrated the extent to which local courts were willing to accommodate state laws to the interests of slave owners. Contrary to the intent of Ohio's 1804 statute prohibiting the employment of any but free blacks, Moses clearly performed work during his three-month stay in Dayton. The Montgomery County court may have been convinced by a narrow legal interpretation that Moses was under the control of his Kentucky owner, William Lindsay, while in Ohio, and thus he did no work for Patterson directly. This decision made it possible for the court to declare that Patterson did not hold Moses unlawfully to labor, allowing Lindsay to recover his slave Moses without further interference.

The Patterson slave cases were probably the first to test Ohio's stand on issues involving slavery, fugitive slaves, and comity. Consensus was not easy to reach, as public and legal opinion was divided over these matters, and attorneys, judges, and juries labored in relative isolation with few precedents to guide them. Although decisions from the two county courts and the federal district court at Chillicothe appeared inconclusive and contradictory, overall they suggested standards that were more accommodating to the interests of slave owners than to those who sought to erase all traces of slavery in the state. Ohio courts generally upheld similar standards of accommodation at least through the late 1830s, but consideration of the interests of slaveholders came under increasing attack during the following decade. During the 1840s, Ohio courts began denying slaveholding citizens of other states the right to bring their chattel freely into the state, even temporarily, and upheld local magistrates' refusals to cooperate in the return of fugitives who crossed the Ohio River. Not until a full four decades after the dramatic events at Newcom's tavern did Ohio courts consistently enforce the position that all

black persons found in the state were free persons, however they had arrived or however long they remained.⁹¹ 6

1. These issues are discussed by Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (Armonk, NY: M. E. Sharp, 2001), 60-78; Finkelman, "Evading the Ordinance: The Persistence of Bondage in Indiana and Illinois," *Journal of the Early Republic* 9 (Spring 1989), 21-51; and Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington: Indiana University Press, 1987), 109-32.
2. Pennsylvania-born Robert Patterson moved to Kentucky in 1775, founded the town of Lexington in 1779, and in 1782 defended the settlements against the Shawnee while rising from private to colonel in the Kentucky militia. He was elected to numerous political and civic offices and in 1788 was one of the three original proprietors of the town of Cincinnati. The only biographies are by Charlotte Reeve Conover, *Concerning the Forefathers: Being a Memoir, with Personal Narrative and Letters of Two Pioneers, Col. Robert Patterson and Col. John Johnston* (Dayton: National Cash Register Co., 1902); and the derivative *Builders in New Fields* (New York: G. P. Putnam's Sons, 1939).
3. The Ohio Constitution of 1803, Art. VIII, Sec. 2, prohibited the indenture of any "negro or mulatto" adult, save those made with free persons within Ohio for terms not exceeding one year, but children could be indentured until age eighteen years for females or twenty-one years for males, regardless of color.
4. "An act to regulate black and mulatto persons," 2 *Ohio Acts* (1803). The fugitive slave provisions were repealed on April 1, 1807 by "An act to amend the act, entitled 'An act regulating black and mulatto persons,'" 4 *Ohio Acts* (1806).
5. The best general discussion of comity, or the recognition by the courts or jurisdictions in one state of the laws and judicial decisions in other states, in early Ohio can be found in Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981), 3-19, 87-92.
6. Andrew R. L. Cayton, *The Frontier Republic: Ideology and Politics in the Ohio Country* (Kent, OH: Kent State University Press, 1986), 57-59.
7. No earlier cases are reported by William Henry Smith, "The First Fugitive Slave Case of Record in Ohio," *American Historical Association Annual Report for 1893* (1894), 93-100; Leo Alilunas, "Fugitive Slave Cases in Ohio Prior to 1850," *Ohio Archaeological and Historical Quarterly* 49 (1940), 160-84; and Stephen Middleton, "The Fugitive Slave Issue in Southwest Ohio: Unreported Cases," *Old Northwest* 14 (Winter 1988-89), 285-310.
8. Benjamin Van Cleve, *Memoirs of Benjamin Van Cleve*, ed. Beverley Bond, Jr. (Cincinnati: Abingdon Press, n.d. [1922]), 64; John F. Edgar, *Pioneer Life in Dayton and Vicinity, 1796-1840* (Dayton: W. J. Shuey, 1896), 50, 77-155 passim; Robert W. Steele and Mary Davies Steele, *Early Dayton, with Important Facts and Incidents from the Founding of the City, to the Hundredth Anniversary, 1796-1896* (Dayton: W. J. Shuey, 1896), 51-100 passim; *History of Dayton, Ohio* (Dayton: United Brethren Publishing House, 1889), 34-70; and Henry L. Brown, *A History of the First Presbyterian Church of Dayton, Ohio, From 1845 to 1880* (Dayton: Journal Book and Job Printing, 1880), 3-9.
9. The Montgomery County Court of Common Pleas and the quarterly sessions of the supreme court met in a Newcom Tavern room or in the adjacent yard. Steele, *Early Dayton*, 55; *History of Dayton*, 61; *History of Montgomery County, Ohio* (Chicago: W. H. Beers, 1882), 557-58; and Charlotte Reeve Conover, *A Memoir, with Letters of Mrs. Horatio G. Phillips, a Pioneer Woman* (Dayton: Press of the N. C. R. Co., 1914), 10, 14.
10. The rescue narrative is based primarily on the Andrew McCalla complaint and Robert Patterson deposition, included in *Andrew McCalla v. Christopher Curtner, Daniel Cooper, and Joseph Rayburn* (1819), United States District Court, District of Ohio, Record Book A (hereafter cited as *McCalla v. Curtner et al.* [1819]), National Archives and Records Administration, Great Lakes Regional Branch, Chicago, IL, (hereafter cited as NARA-Chicago). Patterson referred to "a house" in Dayton as the scene of the rescue, by which he probably meant a public house. The only public house in Dayton at the time was Newcom's Tavern, which otherwise fit the description of events that day. Although George Newcom was county sheriff from 1803 to 1807, he apparently played no role in the rescue.
11. A copy of that bill of sale, dated Nov. 3, 1804, is included in the Patterson Papers, box 2, file 3, Department of Archives and Special Collections, Wright State University Library, Dayton, Ohio (hereafter cited as WSU).
12. *McCalla v. Curtner et al.* (1819), NARA-Chicago.
13. "An act respecting fugitives from justice and persons escaping from the service of their masters," U.S. Stat. 1 (1793): 302 (Sec. 3).
14. *Andrew McCalla v. Samuel Hopkins, George F. Tenery, Martin Myers, Conklin Miller, Benjamin Vancleve, Patrick Lafferty, and Jerome Holt* (1816), United States District Court, District of Ohio, Record Book A (hereafter cited as *McCalla v. Hopkins, et al.* [1816]), NARA-Chicago.
15. Sharp arrested both of the Pages, but there were no other direct references to Lucy Page's role in the rescue. *McCalla v. Curtner et al.* (1819), NARA-Chicago.
16. In his memorandum, Patterson accused Patton of giving Ned Page the weapon; "Charges Escribed against Mathew Patton and wife," Patterson Papers, box 2, file 3, WSU.
17. *Ohio v. David Sharp* (1807) re *Holt*, and *Ohio v. David Sharp* (1807) re *Page*, both in Warren County, OH, Supreme Court Record, 1807, Ohio Historical Society, Columbus (hereafter cited as OHS); *McCalla v. Hopkins et al.* (1816) and *McCalla v. Curtner et al.* (1819), both at NARA-Chicago.
18. Robert Patterson endorsed the Transylvania Presbytery's 1794 call for emancipation after preparing slaves for freedom by teaching them to read. During the 1798 constitutional campaign, Patterson went so far as to advertise in the Lexington newspaper a Sunday school where slaves would be taught. Joan Wells Coward, *Kentucky in the New Republic: The Process of Constitution Making* (Lexington: University Press of Kentucky, 1979), 118-19; Asa Earl Martin, *The Anti-Slavery Movement in Kentucky Prior to 1850* (New York: Negro Universities Press, 1970), 31; Lowell H. Harrison, *The Antislavery Movement in Kentucky* (Lexington: University Press of

- Kentucky, 1798), 18-21; *Kentucky Gazette* (Lexington), Oct. 17, 1798.
19. Conover, *Concerning the Forefathers*, 268, 280, 286; *History of Dayton*, 70; *History of Montgomery County*, 157.
20. Conover, *Concerning the Forefathers*, 266, 269-70. Conover claims that Patterson's decision to move to Ohio, which he announced to his friends at his fiftieth birthday celebration on March 15, 1803, was attributable to an unexpected financial loss. Patterson had been looking for a homestead in Ohio for at least three years prior to 1803. He had signed a six-thousand-dollar security bond on behalf of John Arthur, deputy revenue collector in Kentucky, who was accused of failing to deposit his collections. According to Conover, Patterson raised the needed cash to satisfy the bond by selling his extensive land holdings in Lexington. This account of events probably had little to do with Patterson's decision to leave Kentucky. *U.S. v. John Arthur and Robert Patterson* (1803), United States District Court, Sixth Circuit, Kentucky, Complete Record Book H, Record Group 21: Records of the District Courts of the United States, National Archives and Records Administration, Southeast Regional Branch, Atlanta, GA.
21. Conover, *Concerning the Forefathers*, 270.
22. James Hanna deposition, *McCalla v. Curtner et al.* (1819), NARA-Chicago; Andrew McCalla to Robert Patterson, July 27, 1803, Patterson Papers, box 2, file 3, WSU.
23. Depositions of Alexander McConnell, James Hanna, and Mathew Patton, *McCalla v. Curtner et al.* (1819), NARA-Chicago; and Conover, *Concerning the Forefathers*, 314. One curious insight into Patterson's thinking is revealed in the conditions he set for the sale of a slave named Betty to his friends Ester and Mathew Patterson prior to his move to Ohio. The bill of sale stipulated that Betty, aged thirty-two, was to be freed after twelve years and that her son and any other children she might have were to be freed after serving thirty-one years from their date of birth; Bill of sale, undated, Patterson Papers, box 12, file 10, WSU.
24. Rufus King, *Ohio: First Fruits of the Ordinance of 1787* (Boston: Houghton Mifflin, 1898), 364; and Van Cleve, *Memoirs*, 70-71. See also Cayton, *Frontier Republic*, 57-59; Finkelman, *An Imperfect Union*, 147; James A. Rodabaugh, "The Negro in Ohio," *Journal of Negro History* 31 (Jan. 1946), 13; Charles Jay Wilson, "The Negro in Early Ohio," *Ohio History* 39 (July 1930), 713-78; Edgar, *Pioneer Life*, 37; and A. W. Drury, *History of the City of Dayton and Montgomery County, Ohio* (Chicago: S. J. Clarke, 1909), 81-84, 166. William Maxwell was listed with "his Negro" in the Dayton Township Tax List, 1798, Manuscript Scrapbook, Dayton and Montgomery County Public Library, Dayton, OH (hereafter cited as DMCP). Daniel C. Cooper brought a black girl into his household in 1802 and subsequently indentured her two children on August 30, 1805. Deed Book B, 10, 17-18, Recorder's Office, Montgomery County Administration Building, Dayton, OH (hereafter cited as MCAB).
25. Finkelman, *Imperfect Union*, 88. As territorial governor, Arthur St. Clair held that the Northwest Ordinance prohibition of slavery applied only to the introduction of new slaves and did not apply to slaves held by residents prior to 1787. Arthur St. Clair to President George Washington, May 1, 1790, postscript, in Clarence Edwin Carter, ed., *Territorial Papers of the United States*, vol. 2, *The Territory Northwest of the Ohio River, 1787-1803* (Washington: U.S. Government Printing Office, 1934), 248; and St. Clair to Judge George Turner, Dec. 14, 1794, in William Henry Smith, ed., *The St. Clair Papers: The Life and Public Services of Arthur St. Clair*, 2 vols. (Freeport, NY: Books for Libraries, 1970), 2: 331-32.
26. Ohio Constitution (1803), Article VIII, Sec. 2.
27. "Dayton Association," *Western Spy* (Cincinnati), June 26, 1801; and Van Cleve, *Memoirs*, 70-71. Van Cleve and Spinning both grew up in New Jersey, which passed its first gradual emancipation law in 1804. From 1803 to 1825, Spinning was associate judge of the supreme court of Montgomery County, Ohio.
28. Andrew McCalla to Robert Patterson, July 27, 1803, Patterson Papers, box 2, file 3, WSU; James Hanna deposition, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
29. Patterson owned at least five adult slaves and three slave children in 1802; Fayette County Tax Records, 1802, Kentucky Department for Libraries and Archives, Frankfort, KY.
30. Kentucky's 1798 manumission law allowed the county courts to demand security for the maintenance of aged or infirmed freedmen; George M. Stroud, *Sketch of the Laws Relating to Slavery in the Several States of the United States of America* (Philadelphia: Kimber and Sharpless, 1827), 149-50.
31. Depositions of James Hanna, William King, and Samuel McCormick, *McCalla v. Curtner et al.* (1819), NARA-Chicago; and Conover, *Builders in New Fields*, 111. Samuel McCormick testified that Patterson intended to free Ned and Lucy Page after they had worked as indentured servants for a term equivalent to their purchase price.
32. Conover, *Concerning the Forefathers*, 314.
33. Depositions of Alexander McConnell, Benjamin Van Cleve, Samuel McCormick, and Isaac Spinning, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
34. Edward Welsh deposition, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
35. Depositions of Mathew Patton and Elizabeth Patterson, *McCalla v. Curtner et al.* (1819), NARA-Chicago; Conover, *Concerning the Forefathers*, 312-13.
36. Finkelman, *Imperfect Union*, 155-56; Paul Finkelman, *The Law of Freedom and Bondage: A Casebook* (New York: Oceana, 1986), 73-74; Raymond Pelan, "Slavery in the Old Northwest," *State Historical Society of Wisconsin Proceedings* (1906), 255-56.
37. Conover, *Concerning the Forefathers*, 313. "An act to regulate black and mulatto persons" provided that after June 1, 1804, no black or mulatto person was permitted to reside in Ohio unless the person could produce a certificate of freedom, thus effectively preventing the emigration of slaves. Every black or mulatto person residing in Ohio prior to June 1 was required to register with the county clerk, who would then issue a certificate of freedom; Record of Black and Mulatto Persons [1804-1805], Montgomery County, OH, WSU.
38. Mathew Patton testified that Patterson intentionally freed Will, but Patterson was not in Dayton when Will's name was recorded in the Record of Black and Mulatto Persons; Deposition of Mathew Patton, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
39. Patterson brought several families of slaves to Dayton, but their names and the timing of their removal is uncertain; Conover, *Concerning the Forefathers*, 271, 277, 312-13. Later in life, Patterson's daughter, Catherine, who was eleven years old at the time, recalled that three black families accompanied the Pattersons during the final move in the fall, although she named only one family,

- the Pages; Conover, *A Memoir*, 10. It is possible that she was mistaken, and rather Patterson brought two of those families with a wagonload of household goods in July. Their names may have been among those recorded in the Record of Black and Mulatto Persons a few weeks later. Benjamin Nixon's name was entered no earlier than September 6, although the date is illegible. On September 6, Reuben Waggoner, his wife Margaret, sons Elijah and Benjamin, and his mother Hannah Waggoner had their names recorded, and two days later, David Hill, his wife Polly, and infant daughter Miriam entered their names. Nixon appeared as a witness in a subsequent lawsuit involving Patterson, and David Hill indentured two of his children to David Reid in 1818. No further record exists of the Waggoners; Deed Book G, 30, MCAB.
40. Conover, *Concerning the Forefathers*, 277-82, 313; Conover, *A Memoir*, 10-11; *Ohio v. Robert Patterson* (1805), Montgomery County, Clerk of Courts, Common Pleas Civil Law Record, vol. A-1, WSU; William King deposition, *McCalla v. Curtner et al.* (1819), NARA-Chicago; and Record of Black and Mulatto Persons [1804-1805], Montgomery County, OH, WSU. The narrative of the Pattersons' move from Lexington to Dayton derives largely from the memoirs of Patterson's daughters, Catherine Patterson Brown, Elizabeth Patterson Nisbet, and Harriet Patterson Nisbet.
 41. Depositions of Mathew Patton and Elizabeth Patterson, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
 42. Depositions of James Hanna and Samuel McCormick, *McCalla v. Curtner et al.* (1819), NARA-Chicago. Robert Patterson told his friend William King that he intended to free Ned Page and Lucy Page after seven years; Robert Patterson deposition, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
 43. William King deposition, *McCalla v. Curtner et al.* (1819), NARA-Chicago. Pennsylvania-born King moved to Ohio in part due to his opposition to slavery; *History of Dayton*, 70; *History of Montgomery County*, 157; and Edgar, *Pioneer Life in Dayton*, 59.
 44. Conover, *A Memoir*, 11-12.
 45. Depositions of Alexander McConnell, Benjamin Van Cleve, and Samuel McCormick, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
 46. Conover, *Concerning the Forefathers*, 313; and depositions of Samuel McCormick, Zechariah Archer, and Mary Smith, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
 47. Conover, *A Memoir*, 12; Conover, *Concerning the Forefathers*, 312-23.
 48. Depositions of Samuel McCormick, James Hanna, Mathew Patton, James Elliot, and David Henderson, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
 49. Conover, *Concerning the Forefathers*, 313; Record of Black and Mulatto Persons [1804-1805], Montgomery County, OH, WSU; and *Ohio v. Robert Patterson* (1805) re *Moses*, Montgomery County, Clerk of Courts, Common Pleas Civil Law Record, vol. A-1, WSU.
 50. Moses complained to the authorities that Patterson was making him work; *Ohio v. Patterson* (1805) re *Moses*, Montgomery County, Clerk of Courts, Common Pleas Civil Law Record, vol. A-1, WSU.
 51. Samuel McCormick deposition, *McCalla v. Curtner et al.* (1819), NARA-Chicago; Conover, *Concerning the Forefathers*, 278; Thomas McNary agreement, Jan. 17, 1804, Patterson Papers, box 2, file 3, WSU.
 52. Record of Black and Mulatto Persons [1804-1805], Montgomery County, OH, WSU. Sarah Ball (also called Sal) "was induced to try other service"; Conover, *Concerning the Forefathers*, 313. No other mention of Sarah Ball or Andrew Wood appears in Montgomery County records.
 53. In 1805, Cooper indentured two children of the black girl he kept in his house, who may have been indentured herself. Reid indentured the son and daughter of David Hill, a free black, in 1818; Deed Book B, 10, 17-18, and Deed Book G, 30, MCAB. George Newcom also probably kept a mulatto boy as an indentured servant; *Ohio Watchman* (Dayton), Oct. 8, 1822.
 54. Conover, *Concerning the Forefathers*, 313; *Ohio v. Patterson* (1805) re *Moses*, Montgomery County, Clerk of Courts, Common Pleas Civil Law Record, vol. A-1, WSU.
 55. Ibid.
 56. Conover, *Concerning the Forefathers*, 313. After especially high spring flooding on the Miami River subsided in April, Patterson returned Lindsay's wagon to him near Georgetown, Kentucky; *ibid.*, 279-80.
 57. *Ohio v. Robert Patterson* (1805) re *Pages*, Montgomery County, Clerk of Courts, Common Pleas Civil Law Record, vol. A-1, WSU.
 58. *Ibid.*; and Record of Black and Mulatto Persons [1804-1805], Montgomery County, OH, WSU.
 59. Dayton City Council Minutes, June 11, 1806, WSU; and Drury, *History of the City of Dayton*, 123.
 60. "Charges Escribed against Mathew Patton and wife," Patterson Papers, box 2, file 3, WSU.
 61. Isaac Spinning deposition, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
 62. The account of this incident and the subsequent trial is based on *Ohio v. Francis Patterson and Robert Patterson* (1806), Montgomery County, Clerk of Courts, Common Pleas Civil Law Record, vol. A-1, WSU; *Ohio v. Francis Patterson and Robert Patterson* (1807), Warren County, Clerk of Courts, Supreme Court Record, OHS; *Ohio Centinel* (Dayton), Sept. 27, 1810, and Feb. 21, 1811.
 63. Conover, *Concerning the Forefathers*, 196, 252; *History of Montgomery County*, 158; and *Ohio Centinel* (Dayton), Feb. 21, 1811.
 64. James Nisbet was the son of Patterson's friend, William Nisbet, and a future son-in-law.
 65. *Ohio v. Patterson and Patterson* (1806), Montgomery County, Clerk of Courts, Common Pleas Civil Law Record, vol. A-1, WSU.
 66. *Ohio v. Patterson and Patterson* (1807), Warren County, Clerk of Courts, Supreme Court Record, OHS.
 67. "An act to amend the act, entitled 'An act regulating black and mulatto persons'" went into effect on April 1, 1807; 4 *Ohio Acts* (1806-07).
 68. *Ohio v. David Sharp* (1807) re *Holt*, and *Ohio v. David Sharp* (1807) re *Page*, both in Warren County, Ohio, Supreme Court Record, 1807, OHS.
 69. *McCalla v. Hopkins et al.* (1816), and *McCalla v. Curtner et al.* (1819), both at NARA-Chicago. The six other defendants were George F. Tennery, Martin Myers, Conkling Miller, Benjamin Van Cleve, Patrick Laferty, and Jerome Holt.
 70. Defendants' response, *McCalla v. Hopkins et al.* (1816), NARA-Chicago.
 71. Depositions of Robert Patterson and Elizabeth Patterson, *McCalla v. Curtner et al.* (1819), NARA-Chicago.

72. Benjamin Van Cleve to John Sittle, Jan. 27, 1810, Benjamin Van Cleve Letter Book, DMCPL.
73. According to a letter in Van Cleve's possession, Patterson told William Barber that the sale was a sham and that Patterson had trouble providing a definitive account of the transaction; Depositions of Benjamin Van Cleve and Robert Patterson, *McCalla v. Curtner et al.* (1819), NARA-Chicago. James Hanna testified that McCalla told him he had no interest in their recovery, and the defense attorneys suspected that Patterson was paying all the court costs; Depositions of James Hanna and Elizabeth Patterson, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
74. *McCalla v. Hopkins et al.* (1816), NARA-Chicago.
75. Benjamin Van Cleve to John Sittle, Jan. 27, 1810, Benjamin Van Cleve Letter Book, DMCPL; *McCalla v. Curtner et al.* (1819), NARA-Chicago.
76. Andrew McCalla to Robert Patterson, July 25, 1810, Patterson Papers, box 2, file 6, WSU.
77. These depositions were copied into the manuscript record of *McCalla v. Curtner et al.* (1819) and constituted a key source for the events involving Patterson's slaves in Dayton.
78. McCalla may have been quite willing to prolong the cases for their nuisance value, while the defendants were in no hurry for resolutions because they had nothing to gain and stood to lose as much as \$1,100 plus court costs.
79. George F. Tennery died in 1812, Benjamin Van Cleve in 1816, and Daniel Cooper in 1818. *McCalla v. Curtner et al.* (1819), and *McCalla v. Hopkins et al.* (1816), both at NARA-Chicago.
80. Conover, *Concerning the Forefathers*, 312-13, 315. Only one young free black male appeared in the Patterson household in the 1820 census, but others living on Patterson lands may have been recorded in their own households.
81. Conover, *Concerning the Forefathers*, 283-84, 298-300; Real Estate Tax Duplicates, Montgomery County, OH, 1812, OHS. Patterson's 1827 will enumerated parcels totaling 1,910 acres; Conover, *Concerning the Forefathers*, 416-19.
82. Dayton Manufacturing Company to Robert Patterson, Oct. 20, 1815, Patterson Family Papers, box 3, file 1, WSU.
83. Conover, *Concerning the Forefathers*, 291-95, 298-99, 300. The house is now the Patterson Homestead Museum.
84. "Charges Escribed against Mathew Patton and Wife," Patterson Papers, box 2, file 3, WSU; Alexander McCalla to Robert Patterson, July 5, 1806, *ibid.*, box 2, file 3, WSU; *Ohio Centinel* (Dayton), Sept. 27, 1810.
85. David Reid to Robert Patterson, Oct. 3, 1808, and James Welsh to Robert Patterson, [Mar.] 5, 1808, both in Patterson Papers, box 2, file 5, WSU; *Ohio Centinel* (Dayton), Sept. 20, 27, Oct. 4, 1810.
86. Several bitter exchanges in Patterson's correspondence suggest the hostilities engendered by the slave cases: "Charges Escribed against Mathew Patton and Wife," Patterson Papers, box 2, file 3, WSU; Robert Patterson to William Barber, Jan. 23, 1806, *ibid.*; and William Barber to Robert Patterson, Feb. 10, 1806, *ibid.*, box 2, file 4. King, whose deposition in the McCalla cases implicated Patterson in duplicitous dealings with McCalla, recalled a conversation with Patterson's wife in which she claimed, "I did not regard the loss of the negroes as much as I do the loss of my friends"; William King deposition, *McCalla v. Curtner et al.* (1819), NARA-Chicago.
87. Jacob Burnet, *Notes on the Early Settlement of the North-Western Territory* (New York: D. Appleton, 1947), 354-56; Helen M. Thurston, "The 1802 Constitutional Convention and Status of the Negro," *Ohio History* 81 (Winter 1972), 15-37; William T. Utter, *A History of the State of Ohio*, vol. 2, *The Frontier State: 1803-1825* (Columbus: Ohio Historical Society, 1942), 18-21.
88. This sweeping stand was supported by the Ohio Bill of Rights, which stated unequivocally "all men are born equally free and independent"; Ohio Constitution (1803), Art. VIII, Sec. 1.
89. Ohio jurists, such as Kentucky-born James G. Birney, began arguing such an interpretation by the late 1830s; Finkelman, *Imperfect Union*, 163.
90. Patterson chided McCalla for his lack of attention to the cases as late as 1815; McCalla to Patterson, May 6, 1815, Patterson Papers, box 3, file 1, WSU. In the end, Patterson owed McCalla more than six hundred dollars for expenses incurred in pursuit of the federal cases, including numerous payments to David Sharp; "Estate of Robert Patterson Esq. deceased with Andrew McCalla," Patterson Papers, box 2, file 5, WSU.
91. For a review of jurisprudence regarding slavery and comity in Ohio during this period, see Finkelman, *Imperfect Union* 87-92, 155-78; and Middleton, "The Fugitive Slave Issue in Southwest Ohio."