

THE RELIC OF A BARBAROUS AGE

James Matthew Townsend and Indiana's Black Laws

DEREK HICKERSON



“As inhuman as ever characterized the cotton fields of Georgia or the rice swamps of the Carolinas,” so declared James Matthew Townsend, the second African American elected to the Indiana House of Representatives. The year was 1884, and he made the remark in reference to Indiana’s racial prejudice and discrimination within its laws. Although Indiana prohibited slavery and indentured servitude in its 1816 constitution, throughout the nineteenth century African Americans in the state were faced with much of the same discrimination as blacks living in the South.

By 1850 Indiana had just short of a million residents, but only 11,262 of those were black. Perhaps because there were so few African Americans living in Indiana at the time, overt conflict between whites and blacks in the state was minimal. This extreme numerical imbalance, however, also may have caused white Hoosiers to be slower to embrace social change and to accept racial equality. When Indiana revised its constitution in 1851, though it was progressive in many ways, there were laws embedded within it that were clearly discriminatory. Modeled after the “Black Codes” in the South, Indiana’s “Black Laws” legally denied African Americans the right to vote, prevented them from joining the militia, prohibited them from testifying against whites in court, excluded their children from public schools, and banned interracial marriages. Because there were so few African Americans living in Indiana during the nineteenth century, as well as the fact that Article XIII of the Indiana Constitution prohibited any more from coming into the state, perhaps explains why the Black Laws remained legally uncontested by blacks and were upheld by white legislators for decades.

After the Union’s victory in the Civil War, some of the Black Laws were abolished. The battle was far from over, however, and laws remained in Indiana

The Fifty-fourth U.S. Colored Troops proved to a skeptical white America the fervent spirit and commitment of black Americans as it courageously led charges, fought bravely, and performed its military duties with great honor.

that prevented African Americans from achieving true equality. It took legislative action, by a black legislator, to cause things to change. In 1880 James S. Hinton, an Indianapolis Republican, became the first African American to be elected to Indiana's House of Representatives. Without a doubt, Hinton's achievements were unprecedented and remarkable. However, it was left to later representatives, chief among them Townsend, to seek and secure legislative action on the remaining Black Laws.

James Matthew Townsend was born on August 18, 1841, in Gallipolis, Ohio. As the son of devout Christians who were members of the African Methodist Episcopal Church, Townsend received careful religious and moral training from his parents. By the age of twelve, he had already professed a commitment to Christianity and joined the church. By the age of eighteen he had become a local preacher. As a minister at home, and later as a missionary abroad, Townsend fought tirelessly to teach, encourage, and lead African Americans to greater religious commitment.

In 1861, with the outbreak of the Civil War, Townsend aspired to fight for racial equality in a more literal sense. He was finally given this opportunity in the spring of 1863, after Governor John A. Andrews of Massachusetts issued a call for black volunteers for the Union's Fifty-fourth Regiment. Anxious to serve both his race and his country, Townsend immediately traveled to Boston and enlisted as a private. The Fifty-fourth U.S. Colored Troops

proved to a skeptical white America the fervent spirit and commitment of black Americans as it courageously led charges, fought bravely, and performed its military duties with great honor. Townsend excelled as a soldier and obtained the rank of corporal before the regiment was mustered out at the end of the war.

After his military career, Townsend returned home, working odd jobs and eventually saving enough money to attend Oberlin College. After two years at Oberlin, he moved to Evansville, Indiana, where he became a school principal and continued his religious studies. In June 1871 he was ordained as a deacon in the AME Church by Bishop Alexander W. Wayman and launched his distinguished career in the pulpit. During the next fifteen years he held pastorates in several Indiana cities, including Terre Haute, Indianapolis, and Richmond. In 1876 Townsend was elected assistant secretary of the AME Church's national conference. Two years later, he was appointed as missionary secretary of the church and traveled abroad several times, and in 1881 he served as a delegate to an ecumenical conference in London, England.

Townsend noticed the many manifestations of racial prejudice that remained in Indiana's statutes, including those that barred blacks from joining the state militia and from marrying a white person. He was determined to make positive strides for his race by devoting himself to achieving racial equality in Indiana. An African American religious leader, Townsend recognized his

limited power and influence in the state. He realized that the only way that he, or any other black Hoosier at the time, would be able to make a difference and put an end to the state's legal inequalities and racial discrimination was through political action. In March 1884 he announced his candidacy for the state legislature representing Wayne County. Upon his election in 1884, Townsend, a member of the Republican minority, was the only black legislator in the Indiana House. His power and influence in the general assembly were minimal. Nevertheless, Townsend rejected the passive role that many of his colleagues may have expected from him.

During his first week in the legislature, Townsend boldly introduced a bill to abolish the Black Laws and all distinctions of "race, color, or previous condition of servitude" in state statutes. He explained during the afternoon session on Friday, January 23, 1885: "I am driven to make some remarks on the statutes of the State of Indiana as they stand. But as these statutes mostly stand on amalgamation, my remarks must be mostly on that subject." After presenting ten of his most compelling reasons as to why these Black Laws should have been repealed, Townsend concluded, "This bill purposes to wipe from Indiana's laws, to say the least, the relic of the most barbarous age. This State stands alone in this injustice, and this is the very last chapter of the black laws which have disgraced Indiana. These are the laws preventing blacks from marrying whites and from their belonging to the militia of the State."

Townsend's bill faced great opposition from several members of the Indiana House. One opponent, David Sanders Gooding of Hancock County, responded to Townsend's proposed bill by saying, "Regarding the militia, the Constitution forbids that; the Legislature abolished discrimination in public schools; and as

to marriage, there is no discrimination, as a white man is as much forbidden to marry a colored woman as a colored man to marry a white woman.” In explaining his opposition to Townsend’s bill, William Wesley Browning, representing Brown and Monroe counties, bluntly explained that he opposed the bill “because he believed it unconstitutional; because a Senate bill was much better, and because he would rather his right hand should drop off than to favor the intermarriage of blacks and whites.”

In the end Townsend’s bill failed. A final vote on the measure was never actually taken. Instead, members of the House used parliamentary procedure to pass a subsidiary motion to postpone the debate indefinitely. It appeared that Townsend’s dramatic and heartfelt speech won over many of his colleagues. The motion to postpone indefinitely passed only by a razor thin count of 43-42.

Although Townsend’s bill had technically been defeated, his speech had been a great success, and his spirit and determination had most of its desired effect. Senator W. C. Thompson subsequently introduced a bill in the Senate to abolish discrimination in public accommodations. Thompson’s bill, titled an “act to protect all citizens in their civil and legal rights,” declared that all persons “were entitled to the full and equal accommodations, advantages, facilities and privileges of inns, restaurants, eating houses, barber shops, public conveyances on land and water, theaters, and all places of public accommodations and amusement, subject only to the conditions and limitations established by law and applying to all citizens.” However, it should be noted that Thompson’s bill failed to alter the laws preventing miscegenation and excluding blacks from the militia. It was for this reason that many of those who had opposed Townsend’s bill actually supported Thompson’s. The

“The colored men were prevented from belonging to the militia, but were good enough to fight, to vote, to hold office, to sit on the jury and to be witnesses in court. Good enough to fight when the draft was suspended to save the white faces of Northern men. One hundred thousand of God’s sons, carved in ebony, engaged in 250 battles of the South. Under the laws of our State, they cannot belong to the militia. How patriotic! But the negro is good enough to die for his country.”

Democratic *Indianapolis Sentinel*, for example, endorsed Thompson’s bill because it guaranteed blacks “every right and privilege under the law” that whites possessed. Even one of Townsend’s most stubborn opponents, Gooding, also supported this “complete civil rights bill” that “does not change the law preventing intermarriages.” In the end, Thompson’s bill finally secured the approval of both branches of the legislature and became law.

Townsend supported Thompson’s bill in spite of its inadequacies. Townsend viewed the retention of a law prohibiting intermarriage, however, as a sad commentary on the public sentiment in Indiana. Disappointed, Townsend returned home to Richmond after the legislative session. To his surprise, his family and friends were full of pride, both in him and in his efforts. Indeed, Townsend received great admiration from his associates, as well as from blacks across the state. The *Richmond Weekly Palladium* claimed he had served his constituency with “marked fidelity and ability,” and the *Indianapolis World*, a black newspaper, characterized his legislative campaign against the Black Laws as a “good fight.” Ultimately, Townsend’s bold advocacy of his unprecedented civil rights bill was indicative of his entire legislative

career, which was characterized by great skill, energy, and perseverance. Although his civil rights bill had failed, Thompson’s bill outlawing discrimination in public accommodations had passed, and that was undoubtedly a step in the right direction for Hoosier African Americans.

An examination of the Black Laws that remained on the books, as well as the arguments for and against upholding them, sheds light on the attitudes about race relations in Indiana that would persist for years. The first of these laws prevented black Hoosiers from joining and belonging to the state militia. In response to Townsend’s bill, which sought to repeal this law, Browning maintained, “That is a constitutional provision which cannot be reached by a bill of this character.”

Outraged, Townsend noted the hypocrisy of this provision when he argued: “The colored men were prevented from belonging to the militia, but were good enough to fight, to vote, to hold office, to sit on the jury and to be witnesses in court. Good enough to fight when the draft was suspended to save the white faces of Northern men. One hundred thousand of God’s sons, carved in ebony, engaged in 250 battles of the South. Under the laws of our State, they cannot belong to the mi-

Opposite: A page from legislation introduced in the Indiana House of Representatives by James Matthew Townsend to abolish the state’s infamous Black Laws and all distinctions of “race, color, or previous condition of servitude.”

A Bill for an act abolishing all distinctions of race, and color, made in the laws of the State of Indiana.

Whereas, It is essential to just government that we recognize, and protect all men as equal before the law, and that equal, and exact justice be meted out to all of whatever nativity, race, color, persuasion, religious, or political, and it being the appropriate object of legislation to enact great fundamental principles into law; therefore

Section 1. Be it enacted by the General Assembly of the State of Indiana that all distinctions of race, and color, made in any, and all of the laws of this State, are hereby ~~repealed~~ and that whenever any right, privilege, capacity, office, or appointment, is, or may be granted to, or any duty, or obligation is, or may be imposed upon any class of the citizens of this State, or any person, or individual therein, the same right, privilege, capacity, office, or appointment, duty or obligation shall be granted to, or imposed upon the citizens, and individuals of every

In southern Indiana on April 13, 1870, Thomas Gibson, a mulatto man, married Jennie Williams, a white woman. The couple's marriage directly violated Indiana law, and just ten days after the ceremony Gibson was indicted by a Vanderburgh County grand jury. However, in light of both the 1866 U.S. Civil Rights Act and the Fourteenth Amendment, the trial judge quashed the indictment.

litia. How patriotic! But the negro is good enough to die for his country."

The second of these remaining Black Laws was perhaps the most important for whites to uphold in order to maintain superiority—the antimiscegenation law that prevented interracial marriage. This specific law was the reason Townsend's original bill faced so much opposition. Legalizing marriage between the races offended the sensibilities of some of the white members of the legislature. In the political context, the term "miscegenation" was used to refer to interracial marriage between blacks and whites. In the more general social context, however, the term was used more broadly to include all forms of sexual activity between the races, which, to most Hoosiers of the time, was viewed as deviant and pornographic. This is somewhat ironic, considering that whites and blacks began "mixing" as soon as Africans arrived in the colonies, and that this "mixing" was most typically initiated by white Americans.

As early as 1725, most of the original colonies, including Virginia (1662), Maryland (1662), Massachusetts (1705), North Carolina (1715), Delaware (1721), and Pennsylvania (1725) had enacted laws prohibiting intermarriages. Although these first antimiscegenation laws were passed in the Colonial period, it was not until after the demise of slavery that these laws began to function as the ultimate sanction of the American system of white supremacy. Indeed, these laws, which were invariably enforced throughout the United States from the 1660s through the 1960s, were among the longest lasting of American racial restrictions, and enforcing them became a key position for the maintenance of white supremacy as a political ideology.

In Indiana legislators enacted more drastic antimiscegenation provisions than those of any other northern state. Several laws were passed that included severe penalties for interracial couples that married,

as well as for those who helped or aided the marriage. For example, in Indiana, the act of 1840, titled "An Act to Prohibit the Amalgamation of Whites and Blacks," instituted fines from one thousand to five thousand dollars and confinement in the state prison for terms from ten to twenty years for persons marrying in violation of this act. A minister performing such a marriage was also subject to a fine from one thousand to ten thousand dollars. Some argued that such a law violated the rights guaranteed to these couples by the U.S. Constitution. In a case that came before the Indiana Supreme Court in 1871, *State v. Gibson*, the court ruled that the state law barring interracial marriage withstood constitutional challenges.

In southern Indiana on April 13, 1870, Thomas Gibson, a mulatto man, married Jennie Williams, a white woman. The couple's marriage directly violated Indiana law, and just ten days after the ceremony Gibson was indicted by a Vanderburgh County grand jury. However, in light of both the 1866 U.S. Civil Rights Act and the Fourteenth Amendment, the trial judge quashed the indictment. Unfortunately for Gibson, the judge's decision did not end the matter; the State appealed to the Indiana Supreme Court.

According to the State, "Neither the Fourteenth Amendment to the Constitution of the United States nor the U. S. Civil Rights Act passed by Congress has impaired or abrogated the laws of this State on the subject of the marriage of whites and negroes. Thus, given that intermarriage was considered a criminal offense by the statutes of the State, Gibson should have been guilty as charged." The State made several arguments to support its position. In sum, the decision of the court in *Gibson* (1871) centered its analysis on the concept of marriage and its place within the state. More specifically, the court emphasized the states' traditional

“The natural law which forbids their intermarriage and that social amalgamation which leads to a corruption of races, is as clearly divine as that which imparted to them different natures. The tendency of intimate social intermixture is to amalgamation, contrary to the law of races.”

power to regulate marriage, determine its scope, and set parameters for what should be deemed acceptable.

The court also turned to both Christian teaching and “natural law” in order to support its position. In particular, the court cited a recent case and decision from the Supreme Court of Pennsylvania wherein it said: “The natural law which forbids their intermarriage and that social amalgamation which leads to a corruption of races, is as clearly divine as that which imparted to them different natures. The tendency of intimate social intermixture is to amalgamation, contrary to the law of races.” The court also noted the natural global separation of the different races, “established by the Creator himself,” as evidence that God did not plan for people of different races to intermix. Ultimately, the Pennsylvania Supreme Court concluded, “The natural separation of the races is therefore an undeniable fact, and all social organizations which lead to their amalgamation are repugnant to the law of nature.” A unanimous Indiana Supreme Court ruled in a similar fashion. The decision of the lower court was reversed, the motion to quash the indictment was overruled, and Gibson was put on trial. In the end, Indiana’s antimiscegenation statute was upheld.

It was over a decade after the Indiana Supreme Court’s decision that Townsend pleaded his case before the Indiana House to repeal the antimiscegenation law. He presented ten reasons why he thought it should be repealed, and among these reasons Townsend spoke of “simple and exact justice,” “the State Constitution,” “personal liberty and personal contract,” “inequality,” and his belief “that the prejudice, education and castes of each race will allow it to choose for itself without these laws.” But the reason that seemed to trouble him the most involved “the white man who may be so vile to ruin the colored woman, while she has no recourse in her shame. And for more than all, for the reason that a white man, so low, so degraded and inferior enough to dishonor and degrade a colored woman, should be made by the laws honorable enough to marry the woman he has thus degraded.”

Before wrapping up his case, Townsend pleaded in a more desperate tone, “I ask no man to accord me more. I am colored, it is true, but I am a man. I ask no favor nor shall I shrink from any responsibility. I am in favor of absolute freedom. I am a humanitarian and, thank God, a Christian. I am not wrong.” The depth of Townsend’s conviction was perhaps best captured when he used sarcasm to reply

to the question of whether or not he had married a white woman, he said, “No; I married a lady.”

This simple, yet extremely powerful and meaningful response, epitomized Townsend’s beliefs about miscegenation. Townsend agreed that marriage was sacred. It is a lifelong commitment to one’s partner, though, and since one can’t help whom he or she falls in love with, shouldn’t one be able to freely choose that partner? This was Townsend’s point in saying he had married a lady. A “lady” is a lady, and a “gentleman” is a gentleman, regardless of race or color—that was the message that Townsend tried to convey to Indiana in 1885, but obviously, he delivered it at a time long before Hoosiers were ready to accept it. In fact, Indiana’s antimiscegenation law was upheld for nearly a century. It wasn’t until 1965, just two years before the famous U.S. Court case *Loving v. Virginia* officially overturned all remaining antimiscegenation laws in this country, that Indiana finally repealed its antimiscegenation statute.

Derek Hickerson is a senior studying rhetoric and psychology at Wabash College. He plans to attend law school in the fall. •

FOR FURTHER READING

January, Alan. *A Century of Achievement: Black Hoosiers in the Indiana General Assembly, 1881–1986*. Indianapolis: Select Committee on the Centennial History of the General Assembly, 1986. | Johnston, James Hugo. *Race Relations in Virginia and Miscegenation in the South, 1776–1860*. Amherst: University of Massachusetts Press, 1970. | Snell, Ronald David. “Indiana’s Black Representatives: The Rhetoric of the Black Republican Legislators from 1880 to 1896.” Ph.D. diss., Indiana University, 1972. | Thornbrough, Emma Lou. *Indiana Blacks in the Twentieth Century*. Bloomington: Indiana University Press, 1999. | _____. *The Race Issue in Indiana Politics during the Civil War*. Bloomington, IN: s.n., 1951.