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The Oberlin Fugitive Slave Rescue: A Victory for the Higher Law

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THE OBERLIN FUGITIVE SLAVE RESCUE:

ONE SMALL VICTORY FOR THE HIGHER LAW

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In the late 1850s, the small village of Oberlin, Ohio, was a magnet for fugitive slaves. The eponymous college, founded in 1833, had welcomed African-American students since its second year of operation, and it boasted numerous prominent free blacks among its students and graduates. Frederick Douglass sent his daughter Rosetta to Oberlin, and Margru Kinson—one of the slaves freed by the United States Supreme Court in the Amistad case—also attended Oberlin before she returned to Africa as a teacher. By 1858, Oberlin was surely the most racially integrated community in the United States, with white and black citizens living, studying, and working side by side. It was therefore only natural that fugitive slaves were also drawn to Oberlin, in the hope that they could blend into the well-established free black population. In fact, Oberliners themselves bragged that their town was "one of the most notorious refuges of fugitive slaves in the North."

Needless to say, Oberlin was also a magnet for Kentucky slavehunters, who ranged across Ohio in search of runaways. Perhaps some of the slavehunters were honorable, seeking only actual fugitives, but many of them were unscrupulous and quite willing to capture any vulnerable black person who could be dragged to Kentucky for a reward. The slavecatchers were aided in their dismal business by the infamous Fugitive Slave Act of 1850, which empowered them to make arrests on the basis of nothing more than a slavemaster's "power of attorney" and an *ex parte* document from a southern court. Sometimes greater formalities were observed—perhaps including the issuance of a warrant and a subsequent hearing before a federal commissioner—but even then the alleged fugitive was prohibited from testifying and was allowed no appeal. Perhaps most offensively, fugitive slave commissioners were paid a fee of $10 for every "certificate of removal" granted to a slavehunter, but only $5 if an alleged runaway was released. Along with many other northerners, the citizens of Oberlin despised the Fugitive Slave Act and vowed to resist it at every opportunity. Just as most slavehunters did not care whether their quarry were slaves or free, neither did most Oberliners—they were determined to rescue any black person who fell into the slavecatchers' clutches.

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It was therefore hardly surprising when, in the early spring of 1856, a black stranger named John Price showed up in Oberlin. Nearly starving and wearing ragged clothes, and speaking with an unmistakable Kentucky accent, there was little question that Price was a fugitive. But the people of Oberlin did not care. Price was entered on the town records as a "poor stranger," and granted a stipend of $1.25 per week until he could find work. The payment to Price was authorized by the village clerk, John Mercer Langston, a free black man, born in Virginia, and the son of a white plantation owner. A graduate of Oberlin College, Langston was one of the first black lawyers in Ohio, and one of the first black public officials anywhere in the United States. Charles Langston, John Mercer's older brother who was also an Oberlin graduate, would soon play the central role in the last great fugitive slave trial before the Civil War.

John Price lived quietly in Oberlin for the next two years, working as a farm laborer and only intermittently relying on public support. Despite his efforts at anonymity, Price was one day recognized by a slavehunter named Anderson Jennings. Well, perhaps he was recognized. Jennings had actually come to Oberlin is search of a slave named Henry, whom he failed to find. Rather than return to Kentucky empty-handed, Jennings searched through Oberlin for other probable runaways, and eventually settled upon John Price as the likely "property" of his neighbor, John Bacon, of Mason County, Kentucky. Jennings wrote to Bacon, informing him that he had "discovered a nigger near Oberlin answering to the description of his runaway, John," and requesting formal authorization to capture Price.

Bacon did not hesitate. He went immediately to the Mason County Circuit Court, where a deputy clerk drew up a power of attorney authorizing Jennings "to capture and return the negro John, now at large in the State of Ohio." The deputy was apparently new on the job, and he made some errors on the document that no doubt seemed trivial at the time, although they would assume great importance in the trial that followed. Bacon then entrusted the power of attorney to another part-time slavehunter named Richard Mitchell, with instructions to deliver it to Jennings in Ohio. Bacon gave Mitchell money for expenses, and promised him a $500 reward for the delivery of his human property.

Mitchell arrived in Oberlin on Wednesday, September 8, 1858, and met Jennings at a hotel owned by Chauncy Wack, one of the few pro-slavery Democrats in town. Wack, in turn, introduced the slavehunters to a deputy federal marshal named Anson Dayton, who was well known as an enthusiastic ally of slavehunters. Dayton cautioned the two Kentuckians that it would be difficult to capture a slave in Oberlin, and recommended that they first obtain a federal warrant—even though it was not strictly necessary under the Fugitive Slave Act—as additional proof that they were acting legally. Dayton also advised them to maintain secrecy by obtaining the warrant from the federal court for the Southern District of Ohio, located in

Columbus, rather than from the Northern District in nearby Cleveland. The slavehunters took Dayton's advice and proceeded immediately to Columbus where they had no difficulty obtaining a federal warrant, even though it was arguable that Oberlin lay beyond the court's jurisdiction. That too would become an issue at trial, but for the time being it surely appeared that Jennings and Mitchell were well equipped with legal authority for their work. They realized, however, that they might also need more muscle if they were to spirit a slave out of Oberlin, so they enlisted two local law officers, Jacob Lowe and Samuel Davis, to assist them in their work.

The small posse arrived back in Oberlin on September 11, with only one step remaining in their plan. They needed some way to lure John Price out of town, so that he could be captured without risk of interference from abolitionist Oberliners. Once again Chauncy Wack provided the necessary information. He referred the slavehunters to a local farmer named Lewis Boynton whose twelve year old son—named Shakespeare—turned out to be willing and available to act as a decoy in exchange for a $10 payoff.

On the morning of Monday, September 13, young Shakespeare drove his father's wagon to the home of John Price, and invited the black man to join him for a ride in the country. "The fresh air must feel good for you," the boy said, promising to the unsuspecting John that he would "bring you back again." John had no reason to mistrust a child, so he climbed into the buggy without realizing that he was heading into an ambush.

They had only driven about a mile out of town when they were met by a buggy carrying Mitchell, Lowe, and Davis (Jennings had remained behind to avert suspicion). The three slavecatchers quickly overpowered John, forcing him at gunpoint from the farm wagon into their own buggy. Satisfied with their work, and with the frightened John Price wedged between them, the slavehunters headed away from Oberlin and toward Wellington, ten miles distant, which was the nearest town with a railroad station. They planned to meet Jennings in Wellington, and from there to proceed by train to Columbus and ultimately to Kentucky.

Fortunately for John, his plight had not gone unobserved. Another buggy happened to be passing in the opposite direction, and its occupants heard John cry out for help. The driver of the second buggy was a young man named Ansel Lyman—an Oberlin student and staunch abolitionist who had once served with John Brown's Free-State militia in Kansas. Realizing that he was outnumbered, Lyman took no immediate action, but he sped his buggy into town where he raised the alarm that a black man had been kidnapped on the road to Wellington.

As word of the kidnapping spread, a crowd of outraged Oberliners gathered in the town square. At least a hundred of them—both white and black—soon started off on the ten-mile trip to Wellington, traveling on horseback, in wagons, and on foot.

Some of the rescuers were armed, including forty-one-year-old Charles Langston who carried a loaded pistol in his waistband. Charles was twelve years older than his more famous younger brother, and both (along with another brother named Gideon) were the sons of Virginia plantation owner Ralph Quarles, who was a veteran of the Revolutionary War. Quarles had fallen in love with a slave named Lucy Jane Langston, with whom he had three children. Unlike most sexual encounters between masters and slaves—which amounted to nothing more than rape—the relationship between Ralph and Lucy was close and devoted, eventually becoming a marriage in all but name. Quarles emancipated Lucy and her children, and he made certain that his sons were well educated. Realizing that mulattos had no future in Virginia, Ralph arranged for his children to be raised in Ohio, and he provided for their financial security in his will. Charles Langston had grown up with the firm understanding that he was the equal of any white man, and he had become one of the leading militant abolitionists in Ohio. He no doubt carried his pistol for self-defense, as his life had been threatened in the past.

Charles Langston was later called the leader of the Oberlin rescuers, but that was not accurate because the mob itself was leaderless. The crowd of students, teachers, ministers, and townsfolk rushed headlong toward Wellington without coordination and without pausing to create any sort of organization.

In the meantime, Lowe, Mitchell, and Davis arrived in Wellington with their captive in the early afternoon. Quite unaware that they were being pursued, the slavecatchers rendezvoused with Anderson Jennings at Wadsworth's Hotel, where they planned to enjoy a leisurely lunch before catching the 5:00 pm train for Columbus.

The slavecatchers' meal was interrupted, however, when scores of angry Oberliners began to arrive in the village square, where they were joined by as many as a hundred more Wellingtonians (who had first been drawn to town by a fire earlier that morning). Soon the crowd realized that the slavehunters and their prisoner were sitting in Wadsworth's dining room, forcing the Kentuckians to retreat to an attic room where they could bar the door. Oliver Wadsworth, the innkeeper, was sympathetic to slavery and he ordered his employees to guard every entrance to the building.

For a while there was a standoff. The slavehunters could not reach the railroad station, but the rescuers—for the time being—were reluctant to storm the hotel by force. At one point Jennings decided that he might be able to calm the threatening mob by appealing to the law. He stepped onto a balcony and loudly declared that "this boy is mine by the laws of Kentucky and the United States [and] the boy is willing to go to Kentucky." That only made things worse, as somebody shouted back "There are no slaves in Ohio," while others demanded that John himself be brought onto the balcony.

Surprisingly, Jennings complied, ducking back into the hotel and returning to the balcony with John and the other three slavehunters. Visibly frightened, John was prodded by his captors to tell the crowd that he "supposed" he would have to return to Kentucky because Jennings "had got the papers for him." The obvious intimidation of the poor slave only made the crowd angrier, and people began shouting for John to jump to freedom. Then Oberliner John Copeland—a free black man who would later join John Brown at Harper's Ferry—began waving a pistol in Jennings's direction. The mere site of an armed black man panicked the Kentuckian, who then dragged Price back into the hotel.

As the slavehunters kept a wary eye on the crowd, one of them recognized Charles Langston. Deputy Jacob Lowe had known Langston in Columbus—where the latter had worked as a schoolteacher and journalist—and considered him "a reasonable man." Lowe sent word for Langston to join the slavecatchers in the attic, in a last ditch attempt to bring things to a peaceful conclusion. To his great misfortune, Langston accepted the offer and agreed to enter negotiations on behalf of the Oberliners.

The discussion went on for about thirty minutes, but it produced no meaningful results. Langston insisted that the slavecatchers simply release their prisoner, pointing out that the crowd was "bent upon a rescue at all hazards." Lowe responded with a counter-offer, suggesting that a committee of Oberliners could escort the posse to Columbus, in order to ensure that John would have a fair hearing before a fugitive slave commissioner. In support of his position, Lowe showed the warrant and power of attorney to Langston. Although the validity of the papers would later be disputed, Langston acknowledged that the documents appeared to be in order, and he agreed to present Lowe's proposal to the crowd. Langston did not think that the compromise had any chance of success, as neither he nor any of his Oberlin friends placed any confidence in the decisions of a fugitive slave commissioner. The crowd would almost certainly reject the plan outright, he explained to Lowe, saying either "*We* will have him anyhow," or "*They* will have him anyhow." The disputed pronoun—we or they—would take on much significance when Langston was later prosecuted for violating the Fugitive Slave Act.

Langston was right, of course, that nobody in the crowd was interested in cooperating with slavecatchers, nor was there a leader who could have accepted a compromise even if he had wanted to. Not long after Langston emerged from the hotel, two separate groups of Oberliners stormed the building through the front and back doors. The two groups of rescuers—with African-Americans in the forefront—raced up the hotel staircases while pushing Wadsworth's employees out of their way. Reaching the attic, they called on Jennings and Lowe to release their prisoner, but the slavehunters refused.

After only a few minutes hesitation, the abolitionists burst through the door and knocked several of the slavehunters to the ground. Although some of the rescuers were armed, not a shot was fired. Instead, they lifted John Price onto their shoulders and carried him downstairs and into the public square. Cheering in victory, the rescuers hurriedly threw Price into the back of a waiting wagon—driven by an Oberlin bookseller named Simeon Bushnell. In little more than an hour, Price was back in Oberlin. The freed slave was hidden for a few days in the home of a senior professor, and then he was taken surreptitiously to Canada. Nothing more was ever heard from John Price, but John Mercer Langston later expressed confidence that "John Price [now] reposes under his own vine and fig tree with no one to molest him or make him afraid."

Oberlin celebrated the rescue with a bonfire and rally in the town square, while abolitionists across the country also rejoiced that at least one black man had been saved from bondage. In official quarters, however, the response was far less favorable. President James Buchanan had been elected in 1856 on a pro-southern platform that promised faithful compliance with the Fugitive Slave Act. Neither Buchanan nor his attorney general, fellow Pennsylvanian Jeremiah Black, could tolerate the Oberliners' blatant disregard for southern rights. They briefly considered bringing treason charges against the rescuers—which would have carried the death penalty—but more moderate counsel prevailed and they settled for the indictment of 37 rescuers for violating the Fugitive Slave Act. The defendants included Charles Langston and eleven other black men, as well as three leaders of the Oberlin community who had not even gone to Wellington.

From the nature of the indictment, it was obvious that the purpose of the prosecution was not merely to punish the actual rescuers, but also to suppress the growing abolitionist movement in northern Ohio. Presiding over the grand jury, Judge Hiram Willson had scoffed at the abolitionist concept of "higher law," as he noted that the Constitution protected all forms of property—including slaves—whether they were found "north or south of the Ohio River."

The trials began in Cleveland on March 8, 1859. The prosecutors, led by United States Attorney George Belden, elected to try the defendants one by one, leading off with Simeon Bushnell, the unassuming Oberlin bookstore clerk who had been seen driving the getaway wagon. The evidence against Bushnell was overwhelming, as many witnesses had seen him speeding away from Wellington with John Price in the back of his wagon. Bushnell's lawyers attempted to raise various technicalities, including defects in Jennings's papers, but to little effect.

At the close of the case, the prosecutor hardly bothered to mention Bushnell, focusing instead on the entire town of Oberlin. He assailed "the saints of Oberlin," while ridiculing "sub-saint Bushnell." He argued that "slaves were not fit for freedom," and defended the necessity

of the Fugitive Slave Act. “When the Oberlin men went down to Wellington,” he said, “they proclaimed that they did so under the Higher Law, for they knew they were outraging the law of the land.”

Stunningly, defense attorney Albert Riddle took up the challenge. He virtually admitted that his client had participated in the rescue, boldly adding

> And now, as to the matter referred to, the so-called dogma of the Higher Law . . . I am perfectly frank to declare, *that I am a votary of that Higher Law.*

Riddle’s announcement had its intended effect. The courtroom fell silent, as spectators and participants realized the impact of what they had just heard. The ideal of higher law had been preached from pulpits and repeated in the streets for almost a decade—ever since Senator William Seward had opposed the Fugitive Slave Act by appealing to a “higher law than the Constitution”—but it had not been raised as a legal defense in court. But now attorney Riddle had crossed the final barrier, calling the federal Fugitive Slave Act the “sum of all villainies,” and urging the jurors to congratulate Bushnell, rather than convict him, for his open disregard for the law.

The defense team had entered uncharted territory with a bold and unprecedented tactic, but it did not impress the court. Judge Willson told the jury that higher law had no bearing outside of an “ecclesiastical tribunal.” At least some of the jurors, however, appeared to have doubts. They deliberated for over three hours—an unusually long time in that era—before returning a verdict of guilty.

The Bushnell case, however, had only been a warm-up. The real test of the higher law would come in the trial of Charles Langston, which was set to begin the following day.

The prosecution of Charles Langston was legally weak but politically important. Langston was a statewide leader of the black abolitionist movement, better known at the time even than his more professionally accomplished younger brother. Yet Langston’s involvement in the rescue had been largely as a peacemaker. He played no part in overpowering the slavecatchers, but had attempted only to negotiate the voluntary release of their captive. The conviction of Langston would thus serve both as a blow to Ohio’s free black population, and as a warning that even nonviolent resistance to the Fugitive Slave Act would be harshly punished.

The case against Langston hinged on his alleged threat to Lowe and Jennings that “*we* will have him anyhow.” On the basis of that single first-person pronoun—as distinct from “*they* will have him”—the prosecutors claimed that Langston was the leader of a conspiratorial mob, and therefore responsible for all of the events that followed. Lowe himself testified to the threatening conversation, and he was corroborated by numerous other witnesses—including

most of the principals; Jennings, Lowe, Mitchell, and even the oleaginous innkeeper Chauncy Wack—who claimed to have heard nearly identical statements at various other times and at several other locations. The testimony against Langston was clearly practiced and coordinated. It was as though he had spent an entire afternoon proclaiming "we will have him anyhow" to just about anybody willing to listen. One might have thought that an Oberlin graduate would have varied his verb choice now and then—perhaps claiming that the crowd would release, free, liberate, or even unshackle the prisoner. But no. The prosecution witnesses all claimed that Langston had used the oddly passive "we will have him" on every occasion.

In a modern trial, the defendant could take the stand to deny such an obviously well orchestrated accusation, but that was not possible in 1859. Ohio adhered at the time, as did every United States jurisdiction, to the so-called "interested party rule," which prohibited a criminal defendant (whether white or black) from testifying on his own behalf. The defense could point out the defects in Jennings's Kentucky papers and the jurisdictional flaw in his Ohio warrant, but the central charge against Langston could not be refuted or explained by the defendant himself. Although several witnesses testified that they had never themselves heard Langston utter the fateful words, it was ultimately impossible to prove the negative—that the defendant had never made any incriminating statements to anybody.

The prosecution closing argument predictably focused on the "agency Langston had in the rescue," describing him as "very cunning and very hypocritical, very shrewd, but very deceiving." It was obviously the prosecutor's intention to criminalize even peaceful resistance to the Fugitive Slave Act, especially by black men, and he underscored his point by calling Oberlin "a buzzard's nest [where] negroes who arrive over the underground railroad are regarded as dear children." "The students who attend that Oberlin College," he said, "are taught sedition and treason."

Defense counsel met the charge head on, directly confronting the issue of race. Referring to the holding of the infamous *Dred Scott* decision—that even free black men could not be citizens of the United States, and had "no rights which the white man was bound to respect"—the defense attorney explained that Langston could never have "a jury of those who are his peers." "Not only is he an alien," the lawyer continued, "but in the view of the law which governs this Court, he is an outcast. He has no equality, no rights, except in being amenable to the penal statutes." Rather than convict Langston, counsel argued, the jury should rejoice "over the escape of a brother man from bondage." In other words, the defense defiantly called upon the jury to nullify the Fugitive Slave Act for the sake of a black man who was "inspired by the noblest of motives."

True to form, Judge Willson did his best to undermine the defense, charging the jurors to respect the Fugitive Slave Act and cautioning them that all "acts of Congress, placed upon

the statute book, should command obedience." As to Langston's nonviolence, the Court instructed the jury that the defendant's mere presence in the crowd made him "a party to every act which may afterward be done by any of the others."

Following those instructions, the all-white jury had little choice but to convict the defendant, but that turned out to be far from the last word in the case.

Having been found guilty, Langston was at last allowed to address the court—and the nation. Judge Willson was required by law to ask the perfunctory question—"why the sentence of the law should not now be pronounced upon you?"—but he could not have anticipated the impact of Langston's response.

"I know that the courts of this country are so constituted as to oppress and outrage colored men," he began. "I cannot, then, expect, judging from the past history of the country, any mercy from the laws [or] from the Constitution." Langston described the many Kentucky slavehunters who had plagued Ohio, "lying hidden and skulking about, waiting for some opportunity to get their bloody hands on some helpless creature to drag him back—or for the first time—into helpless and life-long bondage." Langston made no apology for his part in the rescue, and he made it clear that he intended to continue to rescue fugitives, including those who were lawfully slaves:

> And there were others who had become free—to their everlasting honor I say it—by the exercise of their own God-given powers—by escaping from the plantations of their masters, eluding the blood-thirsty patrols and sentinels so thickly scattered all along their path, outrunning bloodhounds and horses, swimming rivers and fording swamps, and reaching at last, through incredible difficulties, what they, in their delusion, supposed to be free soil.

Every person, said Langston, "had a right to his liberty under the laws of God," no matter what was required to secure his freedom. And that included violent resistance. "If ever a man is seized near me, and is about to be carried Southward as a slave," Langston declared, then we are thrown back upon those last defences of our rights, which cannot be taken from us, and which God gave us that we need not be slaves." And still more, he announced,

> I must take upon myself the responsibility of self-protection; and when I come to be claimed by some perjured wretch as his slave, I shall never be taken into slavery . . . . I stand here to say that I will do all I can, for any man thus seized and held.

Never before had a black man so thoroughly defied a prosecutor, rebuked a judge, challenged a criminal statute, and declared his intention to continue violating the law in the future. With good cause, the spectators in the courtroom broke into "great and prolonged

applause" at Langston's affirmation of resistance. Newspaper reports wired the astonishing story across the country. Charles Langston had become an abolitionist hero, but at what cost would it come when Judge Willson pronounced sentence?

Once again the courtroom was hushed, and this time the surprising words came from the bench. Earlier that day Willson had harshly sentenced Simeon Bushnell, castigating the clerk's devotion to higher law as "criminal" and "dangerous." But now the judge was obviously moved – indeed, visibly shaken – by Langston's forceful humanity. Willson appeared to put aside a sheaf of prepared remarks, and instead spoke extemporaneously and sympathetically. "You have done injustice to the Court," said Judge Willson, "in thinking that nothing you might say could effect a mitigation of your sentence."

> I see mitigating circumstances in the transaction which should not require, in my opinion, the extreme penalty of the law. This court does not make laws . . . . We sit here under the obligations of an oath to execute them, and whether they be bad or whether they be good, it is not for us to say. We appreciate fully your condition, and while it excites the cordial sympathies of our better natures, still the law must be vindicated. On reflection, I am constrained to say that the penalty in your case should be comparatively light.

Willson then sentenced Charles Langston to twenty days in prison and a fine of $100. That was virtually the minimum possible sentence, and it came as a deep disappointment to the prosecution and the Buchanan administration. It was the first time that a United States court had even partially recognized the legitimacy of civil disobedience in resistance to the Fugitive Slave Act, and it was certainly the first time that a black man's act of defiance was considered a "mitigating circumstance" by a pro-slavery judge. One small victory for the higher law.

Important as they were in the spring of 1859, the trials of the Oberlin rescuers were soon overshadowed by even more dramatic events. John Brown led his raid on Harper's Ferry the following October – with two black Oberliners at his side – and the nation's attention inexorably shifted from the fate of runaways to the future of slavery itself. There would be only a few more trials under the Fugitive Slave Act, and none that were as widely followed as the Oberlin case. The struggle over enforcement of the Fugitive Slave Act had played a significant role in heightening sectional animosity, but the conflict had now become irrepressible and legal battles would soon give way to real ones.

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