

Unfree in the Free West?
Accounting for the Black Laws of the Old Northwest and Their Enforcement, 1850-1870

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PRELIMINARY DRAFT; COMMENTS WELCOME. DO NOT CITE.

Abstract

The Black Laws of the Old Northwest were a set of state-level institutional restrictions on rights of citizenship for free African-Americans in the states that entered the union under the auspices of the Northwest Ordinances. These restrictions have traditionally been explained by *a priori* racist attitudes; in this paper, I show that the attitudes responsible for the Black Laws were influenced by traditional economic considerations: wages and job security. Furthermore, I explain that the same factors which accounted for the Black Laws also accounted for the Old Northwest's prohibitions on slavery. Finally, I test the traditional hypothesis that the Black Laws did not effect black out-migration by specifying a model for changes in state-level black populations during the crisis of disunion, the American Civil War, and the early years of reconstruction. Preliminary results indicate that traditional economic considerations, rather than formal institutions, were responsible for changes in black populations during this period.

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“Whoever has inhabited the United States must have perceived that in those parts of the Union in which the Negroes are no longer slaves they have in no wise drawn nearer to the whites. On the contrary, the prejudice of race appears to be stronger in the states that have abolished slavery than in those where it still exists; and nowhere is it so intolerant as in those states where servitude has never been known.”

--Alexis de Tocqueville, *Democracy in America*.

“Posterity shall know, however, how patiently the free Negroes of the Northern States endured the restrictions and proscriptions which law and public sentiment threw across their social and cultural pathway!”

--George G. Williams, *History of the Negro Race in America from 1619 to 1880*

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided always, That any person escaping into the same, from who labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolution of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed, and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July in the year of our Lord 1787, and their sovereignty and independence the twelfth.

--Ordinance of 1787, Article 6

I. Introduction

Traditional renderings of American history paint a shining picture of the states that entered the Union under the Northwest Ordinance of 1787², Article 6 of which, hereafter simply referred to as “Article 6,” was the United States’ first explicit prohibition of slavery anywhere on the North American continent. It was for this statutory prohibition that the Old Northwest earned the moniker “the Free West.”

However, the so-called “Free West” wasn’t as free as we might think. Unbeknownst to many, the states of the Free West endured a protracted debate over whether or not to legitimize chattel slavery in their territories (Article 6 of the Northwest

² These states (Ohio, Indiana, Illinois, Michigan, and Wisconsin) are collectively known as the “Old Northwest.”

Ordinance notwithstanding) and later erected a complex system of institutional restrictions on what we think of as traditional rights of citizenship for free blacks. These restrictions, hereafter referred to as the Black Laws of the Old Northwest (or more simply, “Black Laws”), were among the most straightforward attempts to marginalize blacks and explicitly create a “white” society.

Table 1 offers a bird’s-eye view of the Black Laws, and the reader is referred to Stephen Middleton’s *The Black Laws in the Old Northwest* for a complete treatment of the Laws’ contents. The most explicit of these statutes concerned jury service, voting, and migration: none of the states of the Free West allowed blacks to serve on juries for white defendants, none of them allowed free blacks to vote, every Free West state except Wisconsin required that free blacks post a security bond before they would be allowed to migrate, every Free West state except Wisconsin prohibited miscegenation, and both Indiana and Illinois explicitly prohibited black migration in the 1850’s. Under an Ohio statute passed in 1859, any election judge who allowed someone with a “visible admixture of African blood” to vote was to be fined \$100-\$500 and jailed for 1-6 months.³ Examples of these statutes abound.

The Black Laws are often cited by Confederate apologists to demonstrate that Northern war efforts in the conflict of 1861-1865 were not, and could not have been, motivated by a pervasive desire to abolish slavery and win the day for an egalitarian reading of the Declaration of Independence, as is the impression one might get from Abraham Lincoln’s *Gettysburg Address*. The argument can be articulated by the following syllogism:

³ “An act to prescribe the duties of judges of elections in certain cases, and preserve the purity of elections.” 4-2-1859, Laws of Ohio. Section 2). Cited in Middleton, p. 12.

All states with racist/discriminatory formal institutions would not fight to free the slaves.

Northern states had racist/discriminatory formal institutions.

Therefore, the Northern states did not fight to free the slaves.

Table 1: The Black Laws of the Old Northwest: A Bird's-Eye View

	Ohio	Indiana	Illinois	Michigan	Wisconsin
Entered the Union	March 1, 1803	December 11, 1816	December 3, 1818	January 26, 1837	May 29, 1848
Slavery Constituency	Minor	Major	Major	None	None
Voting Rights	Pro-black suffrage resolution passed during constitutional convention. Judges who allowed blacks to vote were penalized under "visible admixture" law.	None	None	None	None until 1866
Jury Service	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Immigration	1804's act "to regulate negro and mulatto persons" required blacks to register with county clerk and to show proof of freedom as a condition for settlement or employment.	Required certificate of freedom initially. Slaves were "fugitives" in the eyes of the law. 1851 Constitution (Art. 13) prohibited entry.	1813 "Act to prevent migration of free Negroes into the Territory." Blacks were presumed to be fugitive slaves. Constitution of 1848 barred free blacks from entering IL.	Required "free papers."	Legal
Bond Requirements	\$500 (1807)	\$500 (1831)	\$1000 (1829)	\$500 (1827)	None
Colonization	Increasingly sophisticated pro-colonization resolutions in 1818, 1824, and 1828. Attempted to effect colonization in late 1820's.	Colonization societies sprung up and legislature appropriated funds for colonization.	No formal institutional pursuit of colonization.	No formal institutional pursuit of colonization.	No formal institutional pursuit of colonization.
Miscegenation	Informally prohibited; ban on interracial sex ratified in 1861.	Amalgamation Act banned interracial sex.	Barred by 1845 Revised Statutes.	Forbidden until 1883.	Legal

Source: Middleton (1993)

As important as this conclusion may be, the most animating questions concern the formation of the attitudes that led to the enactment of the Black Laws and the conditions surrounding their enforcement or lack thereof. These considerations have two important implications. First, analysis of these attitudes and their formation yields insight into the formation of beliefs and attitudes in the mid-19th century United States with potential implications for inductive generalizations about belief formation. Second, accounting for enforcement helps scholars determine whether institutions or more conventional

considerations mattered most in determining shifts in black populations during the mid-19th century.

Two complementary theories of economic history frame our discussion of the Black Laws. The first is Douglass North's contention that the task of the economic historian is to account for the structure and enforcement of property rights over time, and the second is Ludwig von Mises' statement that the subject of history, as well as economics, is purposive human action. North's theory is best articulated in the following passage:

For the economic historian, the key problems are to explain the kind of property rights that come to be specified and enforced by the state and to explain the effectiveness of enforcement; the most interesting challenge is to account for changes in the structure and enforcement of property rights over time (*Structure and Change in Economic History*, p. 21).

The current discussion offers us a clear historical example of a change in the structure of property rights. While the US Congress specified such property rights under the Northwest Ordinance as would be generally conducive to productive activity, interest groups were able to effect a re-specification of property rights that would have interfered with such activities. The Black Laws of the Old Northwest show us that early American institutions were such that some economic and political actors expected greater benefits from attempting to effect a re-specification of property rights rather than producing and exchanging goods and services. In other words, actors perceived that the returns to changing what was an otherwise extremely liberal social order were perceived to be higher than acting in accordance with that order, and, as we might expect from such a situation, interested parties attempted to turn the libertarian doctrines of "equality before

God and equality before the law” on their respective ears. In this sense, the Black Laws join chattel slavery as a glaring pockmark on an otherwise liberal 19th century American political tradition.

Of course, effecting a re-specification of property rights in principle and effecting a re-specification of property rights in practice are two different endeavors; in this case, the latter was markedly more difficult. Just because a law was on the books doesn't imply that it had its intended effect; in fact, census data indicates that the Black Laws did not effect black out-migration or contribute to changes in black populations during the mid-19th century in any substantial way. Nonetheless, political coalitions in these states were able to effect a re-specification of formal rights in spite of the fact that enforcement mechanisms may have been ineffective.

The second relevant theory is Ludwig von Mises' praxeological theory of history, which states that “the subject of history is action and the judgments of value directing action toward definite ends (*Theory and History*, p. 298).” In the current discussion, we have a clear case of action directed at definite ends (attempts to proscribe the “inalienable rights” fundamental to a liberal democracy), clear information regarding the “judgments of value” (laborers valued secure jobs and high wages), and how these judgments “direct(ed) action toward definite ends” (the adoption of the Black Laws). The latter theory informs the former in this case, as we see how judgments of value led to a re-specification of formal property rights.

This paper has two goals: to ascertain the forces that motivated the adoption of the Black Laws, and to account for black migration in light of the fact that the Black Laws were ineffective. First, I will discuss and articulate the causal chain that led to the

adoption of the Black Laws. I find that “filthy lucre” matters much more than supposed *a priori* cultural considerations; in other words, Free West whites were trying to protect their livelihoods rather than simply oppress blacks for oppression’s sake. Second, I will account for the factors that influenced black migration in the mid-19th century. I discover that matters were more consistent with Litwack’s thesis that the laws weren’t actually enforced and that more traditional economic considerations determined migration.

The rest of the paper is organized as follows. In the next section, I will examine the conditions surrounding the adoption of the Black Laws and show that those with an interest in these laws were motivated by employment considerations. In section three, I show via linear regression that the Black Laws were not an important determinant of black migration in the mid-19th century. Section 4 concludes and offers directions for further research. A collection of appendices contains the full text of several statutes.

II. Racial Policy in the Free West: Slavery, Colonization, and the Black Laws

Slavery

Racial policy in the early 19th century Old Northwest was characterized by three distinct issues: whether or not slavery should be allowed in the territories, whether or not free blacks should be deported (“colonized”) to Africa, and what should be done with free blacks once it was clear that they weren’t to be enslaved or deported. Any discussion of the Black Laws cannot take place apart from a brief discussion of the

debate over whether or not institutionalized chattel slavery⁴ should be sanctioned in the Free West and the efforts of some to deport free blacks to Africa.

While the pro-slavery movement never gained steam in Ohio, Michigan or Wisconsin, there were extensive debates in Indiana and Illinois⁵ over whether or not these states should ignore Article 6 of the Northwest Ordinance and institutionalize slavery anyway. They faced a choice between several feasible sets of property rights. They could choose to legitimize chattel slavery, they could adopt a more liberal stance but still impinge on natural rights, or they could subscribe to a purely Lockean/libertarian system of first-user appropriation. There was considerable support for option one. Former Illinois Governor Thomas Ford, in his *History of Illinois*, stated that “many of our people who had land and farms to sell, (sic) looked upon the good fortune of Missouri (a slave state) with envy (p. 51),” and Stephen Middleton (1997) writes that Hoosiers⁶ “pursued slavery vigorously, thinking that slave labor was vital to the economic development of their state,” and the Indiana slave interests “came as close to recognizing slavery as possible under the laws of the Northwest Ordinance which prohibited slavery.” Berwanger writes that territorial governor Arthur St. Clair was of the mind that Illinois would stagnate without slavery, and many came to regret what Ford called Illinois’ “short-sighted policy.” An 1802 convention in Vincennes, Indiana petitioned Congress for a temporary or permanent repeal of Article 6 because they were supposedly concerned that “many valuable citizens possessing slaves” were moving to the Spanish

⁴ Slavery had been introduced into the territory by French settlers in the 18th century, and the Northwest Ordinance specified that the culture, laws, and institutions of Frenchmen and Canadians in the territory would not be disturbed.

⁵ During the first decade of the 19th century, Illinois was part of the Indiana Territory.

⁶ Natives of Indiana.

side of the Mississippi. The argument of pro-slavery Hoosiers can be best summarized in the following passage from a pro-slavery petition sent to the territorial legislature:

The suspension of the said article would operate an immediate and essential benefit to the Territory, as emigration to it will be inconsiderable for many years except from those states where slavery is tolerated; and although it is not considered expedient to force the population of the Territory, yet it is desirable to connect its scattered settlements, and, in regard to political rights, to place it on an equal footing with the different states. From the interior situation of the Territory, it is not believed that slaves would ever become so numerous as to endanger the internal peace or future prosperity of the country.⁷

Many in the Indiana Territory felt that slavery was necessary for the Territory's economic development. Most migrants were coming from slave states, and it was felt that chattel slavery would "operate an immediate and essential benefit" by encouraging more migration. Hoosiers also resorted to the familiar argument that small-scale slavery, which they were certain would be the extent of slavery in the Indiana territory, was a benevolent institution:

Slavery is tolerated in the Territories of New Orleans, Mississippi, and Louisiana: why should this Territory be excepted?
It is believed that Slaves possessed in small numbers by farmers are better fed and better clothed than when they are crowded together in quarters by hundres; -- their situation in Kentucky, Tennessee, and the back parts of Maryland and Virginia verify this belief.⁸

The pro-slavery coalition of Indiana and Illinois consisted of three groups: land speculators who anticipated price increases if slavery was legalized, slaveholders who had been grandfathered by a reading of Article 6 maintaining that the article only prohibited the *introduction of new slaves* into the territories but were nonetheless anxious about the prospect of emancipation, and prospective residents who wished to exploit the agricultural potential of the Free West states. Their arguments were straightforward:

⁷ *Annals of Congress*, February 2, 1807.

⁸ *House report on slavery in Indiana*, February 14, 1806.

slavery was necessary for the full exploitation of the Territories' salt springs, agricultural resources, and lead mines; slavery would create jobs where none existed before, slavery would generate higher tax revenue, and slavery would expedite the settlement of the territories.

Many of those who opposed slavery did so not on moral grounds but on the grounds that the introduction of slave labor would reduce wages and “degrade⁹” white society (presumably meaning that it was an affront to the dignity of white labor to have a black man do a white man’s job). Lebergott summarizes the views of those who objected to the extension of slavery into these territories by suggesting that anti-competitive sentiments on the part of laborers were responsible for the abolition of slavery in the Northeast:

The region attracted, disproportionately, those migrants who objected to slavery. Some had moral objections. Others refused to compete with slave labor. (John Adams attributed the “real cause” of the abolition of slavery in Massachusetts to the “multiplication of laboring white people, who would no longer suffer the rich to employ these sable rivals so much to their injury... The common people would not suffer the labour, by which they alone could obtain a subsistence, to be done by a slave.”)

This suggests that there was a political tug-of-war between the slave interests and those who didn’t wish to participate in “a kind of monopoly of the United States land for slaveholders (Litwack).” The pro-slavery lobby simply wasn’t powerful enough, and this was due to the composition of these states’ polities. As Lebergott says above, the region was peopled mostly by “those migrants who objected to slavery:” workingmen from the Northeast and yeomen farmers from the south who had no desire to compete with blacks whether they were slaves or free (Litwack). Many were lured by the prospect of land ownership and agricultural success; many Southerners moved north to escape

⁹ This term permeates discussion of the matter. It is reasonable to infer that a worker is “degraded” when it is shown that there are numerous and cheap close substitutes for his labor.

competition from slave labor. In a compromise of sorts, Indiana and Illinois erected complex systems of indentured servitude that resembled slavery in everything but name, but this system crumbled because Article 6 rendered the slave states of Missouri, Arkansas, and Kentucky more attractive settling options for slaveholders.¹⁰

While many Illinois and Indiana farmers were granted *de facto* (as opposed to *de jure*) ownership rights over their servants through the aforementioned system of indentured servitude, this did not provide the assurances many slave owners required before they made their settlement decisions. Berwanger argues that this led to the ultimate demise of the indenture system; the media's perception of the issue, he notes, was that slaveholders wouldn't be inclined to settle in Illinois and Indiana when the "peculiar institution" was perfectly safe in Missouri and Arkansas. To support this contention, he cites the fact that the number of blacks held as slaves or indentures grew from 405 in 1810 to 1107 in 1820, an increase of a paltry 702 people. By comparison, the slave populations of Arkansas and Missouri increased from 3011 to 11839 over the same time period, an increase of 8828 people.

Not surprisingly, Free West laborers and farmers were not thrilled at the prospect of competing with slave labor. Slavery, it was said, would "degrade white labor" and reduce wages; these considerations indicate that anti-slavery sentiments in the Free West had little to do with egalitarian sentiments and more to do with "bread-and-butter" considerations—specifically, wages and job security. Many northerners who objected to slavery did so not because they were out to change the world or because they felt that the

¹⁰ The reasoning here is straightforward: the explicit endorsement of slavery by a state government reduced the uncertainty associated with slave ownership in said state and, as such, increased the capitalized value of slaves in slave states relative to indentured servants in free states. Many felt that refusal to sanction slavery outright was but a stone's throw away from emancipation.

system was morally wrong—they just wanted to protect their jobs. Ironically, this indicates that the same considerations that induced Midwesterners to oppose slavery also induced them to adopt the Black Laws; moreover, it suggests that the early abolitionist movement had less to do with ideology and ethics than it had to do with the “bread-and-butter” considerations that later (and more obviously) motivated labor in the progressive era.

Colonization

Whites in the Old Northwest were faced with the same dilemma plaguing other states: they were saddled with an ever-increasing population of so-called undesirables, and it was becoming an issue that was too big to ignore. The supposed cure was colonization—political leaders in the Old Northwest suggested that money be gathered to pay for the assembly and deportation (to Africa or Canada) of as many free blacks as possible.

As the first state to join the union from the Old Northwest, Ohio took the lead in establishing racial policy, especially policy regarding colonization (Middleton). The Ohio legislature issued its first resolution on colonization on January 29, 1818, and while these resolutions certainly don't have the teeth of laws and statutes, they allow us a glimpse of the wants and desires of those purporting to represent Ohio's electorate. The first resolution was essentially a directive instructing Ohio's representatives in Washington to “use their best endeavors to procure the passage of a law” which would first emancipate and then deport the union's black population. A later resolution, in 1828, was less nebulous. Rather than merely call for emancipation and colonization, this resolution instructed congressmen and senators to “use their efforts to induce the

government of the United States to aid the ‘American Colonization Society’” in effecting colonization. Colonization efforts weren’t limited to state action. Litwack reports that one wealthy Ohioan donated a considerable sum of money to begin a colonization program called “Ohio in Africa,” and Baily (1973) recounts the circumstances (and violence) surrounding the Cincinnati Colonization Society’s efforts to relocate the city’s black population to Ontario.

Like Ohioans, white Hoosiers wished to deport blacks. They went so far as to establish a State Board of Colonization, and their disdain for free blacks was more overt, as can be gathered from Governor J. Brown Ray’s statement to the state senate:

A non-productive and in many instances, a super-annuated population, is pouring in upon us, possessing all the affirmative bad qualities of the uneducated, immoralised bondsman, without affording any of his advantages, living without visible means, or labor—most of whom are paupers on society. This, being the consequence of expulsion laws of other states,¹¹ less humane than ours, renders corresponding measures on our part necessary and inevitable.¹²

And such was the case for all of the states of the Free West. Colonization was said to be desirable because it had most of the qualities of what we might call an unambiguous Pareto improvement—colonization advocates tried to sell it as an “everybody wins, nobody loses” proposition because it would redress past grievances against blacks and rid North America of what it saw as an undesirable element. Of course, this was not the case. Colonization advocates didn’t count on exceptionally high transaction costs; namely, most blacks were none too enthusiastic about the prospect of being uprooted and shipped away, as the violence surrounding the efforts of the Cincinnati Colonization Society indicates (Baily).

¹¹ Many slave states required that manumitted slaves be emigrated, and it was common for slave owners to retire their slaves to the Free West.

¹² *Senate Journal*, 1829-1830.

Motivations

The citizens of the Old Northwest never gave up on colonization; however, it didn't enjoy the resounding success that its advocates predicted. Those with an interest in the matter sought other ways to effect the out-migration of free blacks. These included, but were not limited to, mob violence (Litwack, 1961) and direct institutional prohibitions on migration and settlement (Middleton, 1997; DiLorenzo, 2002; Livingston, 2002).

Anti-negro bombast was certainly impressive. Litwack and Ford both record some of the violent rhetoric that characterized the debate over how to handle the supposed flood of what colonization advocate George Flower called “unprofitable members of society.” In the words of one southern Illinoisan, the white population would “take the matter into their own hands, and commence a war of extermination” if something wasn't done to stem the supposed tide of free blacks into Illinois. An Ohio congressman, after a white mob had thwarted a Virginia planter's attempt to settle his 518 recently emancipated slaves in the Buckeye State, stated that “the banks of the Ohio... would be lined with men with muskets on their shoulders to keep off the emancipated slaves.” Finally, a group of Ohio Germans vowed that they would resist Negro immigration “to the fullest extent of (their) means; the bayonet not excepted.”

While it is impossible to pin down precisely what motivated these attitudes¹³, evidence suggests that an explanation relying on “irrational racism” is lacking in several respects. We can deduce from newspaper records and quotes from prominent leaders that the Free West's aversion to a black presence of any sort—whether it be manifested the Black Laws, colonization efforts, or opposition to emancipation—was primarily a

¹³ Which, in turn, motivated the adoption of the Black Laws.

function of traditional economic considerations: specifically, northern laborers wanted to restrict competition in labor markets as much as possible and, as such, wished to expunge the Free West of its black population.¹⁴

As Voegeli notes, fear that blacks would take white jobs and depress wages marked the debate over abolition:

Farm workers and unskilled city laborers feared that release of southern slaves would bring a horde of Negroes into the Midwest to reduce wages, drive native laboring men from their jobs, and associate with the lower classes of whites.

The Dubuque *Herald* ran an editorial (which originally appeared in the Cincinnati *Enquirer*) on an emancipation proposal:

The hundreds of thousands, if not millions of slaves it will emancipate will come north and west, and will either be competitors with our white mechanics and laborers, degrading them by competition, or they will have to be supported as paupers and criminals at the public expense.¹⁵

And the Chicago *Times* wrote that emancipation would flood the North with “2-3 million semi-savages” who would be a stumbling block in the way of the institutions and organizations of civil society.¹⁶

The comments of Northern leaders indicate that the influx of free blacks was causing consternation among white laborers. Thomas Ewing of Lancaster, Ohio said that the flood of free blacks “is causing much disaffection among the laboring portion of our people.” In the words of Ohio Senator John Sherman, abolition “would have made southern Ohio uninhabitable or driven us to the enactment of harsh and cruel (exclusion) laws.”¹⁷ Anti-negro sentiment ran so high in the Free West that the New Albany

¹⁴ Anti-immigration sentiments weren't merely directed at blacks; Irish and Italian immigrants were also unwelcome.

¹⁵ July 27, 1861.

¹⁶ October 8, 1861.

¹⁷ Both quoted in Voegeli.

(Indiana) *Ledger* observed, in an article on how Indiana negroes were migrating across the river to Louisville, “(t)hey fly to a slave state to enjoy that liberty and security which is denied them in a free state.¹⁸” Finally, Abraham Lincoln was most forthright about the Free West’s motivations for adopting the Black Laws and opposing abolition when he asked the people of Illinois, “(i)s it not rather our duty to make labor more respectable by preventing all black competition, especially in the territories?”¹⁹

Thus were the factors contributing to the adoption of the Black Laws made evident through the engines of public sentiment. It is evident that the Black Laws of the Old Northwest were motivated by more than irrational racism, and the considerations that motivated these states to adopt the Black Laws were more than a mere cultural *a priori*. While it is certainly the case that most whites in the Old Northwest did harbor disdain for blacks *per se*, the factors that motivated them to adopt the Black Laws were traditional economic considerations: wages and job security.

The argument is a straightforward story of protectionism, and it can be stated as follows: white farmers and laborers expected lower incomes as a result of black migration. Either they expected lower wages, a higher probability of being displaced, or both; either way, they expected lower incomes and, as such, had an incentive to take steps to prevent black migration.²⁰ It is important to note that this argument doesn’t rely on arbitrary racist attitudes. The Black Laws were not a consumption good in that whites in

¹⁸ Quoted in Voegeli.

¹⁹ One presumes that, by “more respectable,” Lincoln means “higher-paying.” Quoted in Livingston.

²⁰ The obvious question becomes “why blacks and not other groups?” The question is false; many states, municipalities, and individuals attempted to restrict the migration of other groups (Irish, Catholics, Italians, etc) as well. It seems intuitive that the transaction costs associated with persecuting blacks would be much lower because they are more readily identifiable.

the Old Northwest simply preferred a society with no black presence; they were an exercise in risk reduction.

III. Accounting for Black Migration: The Role of the Black Laws

One would expect that the Black Laws, if enforced effectively, would lead to out-migration from the states in which they were on the books (particularly those of the Old Northwest). However, census data indicates that this was not the case; the black population of the states of the Old Northwest grew at a rate exceeding the national average during the late middle 19th century, even after Hoosiers, Hawkeyes,²¹ and Illinoisans had enacted laws to prevent blacks from migrating into their respective states.²²

Table 2: Percentage change in Black Population

	IL	IN	OH	MI	WI	OLD NW	US
1880-90	23.0%	15.3%	9.0%	0.8%	-9.5%	12.9%	13.51%
1870-80	61.2%	59.7%	26.4%	27.4%	27.9%	40.5%	34.85%
1860-70	277.1%	114.9%	72.4%	74.3%	80.4%	104.9%	9.86%
1850-60	40.3%	1.5%	45.1%	163.2%	84.4%	40.9%	22.07%
1840-50	38.4%	57.1%	45.7%	265.3%	224.0%	54.0%	26.63%
1830-40	64.8%	97.4%	81.2%	208.7%	206.3%	84.8%	23.40%
1820-30	73.5%	155.8%	102.7%	45.9%	276.5%	106.5%	31.44%
1810-20	75.9%	125.4%	148.7%	9.0%	-	122.7%	28.59%
1800-10	326.8%	447.8%	859.1%	3.6%	-	443.9%	37.50%
1790-1800	-	-	-	-	-	-	32.33%

Source: Gibson & Jung, 2002.

Historians (Litwack, Zilversmit, Berwanger) contend that exclusion restrictions were ineffective in terms of inducing blacks to leave a state, and census data supports this proposition. Livingston suggests that we can draw conclusions about the effectiveness of the Black Laws by examining changes in the ratio of black residents to white residents

²¹ Residents of Iowa.

²² A notable exception is Indiana in the 1850s. Litwack hypothesizes that Indiana's out-migration was a result of traditional economic factors rather than the Black Laws.

over time. While the black/white ratio decreased in the states with exclusion statutes (Illinois and Indiana) during the 1850's, the ratio in Illinois had already been decreasing for nearly 5 decades before they elected to prohibit black migration in their constitution of 1848. Furthermore, the decreases that we observe are quite small; smaller, in fact, than decreases in the black/white ratio for the country as a whole.

Table 3: Black/White Ratio and Change Therein in the Old Northwest, 1800-1890

Panel a: Black/White ratio

	IL	IN	OH	MI	WI	OLD NW	US
1890	0.015	0.021	0.024	0.007	0.001	0.016	0.136
1880	0.015	0.020	0.026	0.009	0.002	0.017	0.152
1870	0.011	0.015	0.024	0.010	0.002	0.015	0.145
1860	0.004	0.009	0.016	0.009	0.002	0.009	0.165
1850	0.006	0.012	0.013	0.007	0.002	0.010	0.186
1840	0.008	0.011	0.012	0.003	0.006	0.010	0.203
1830	0.015	0.011	0.010	0.008	0.018	0.011	0.221
1820	0.026	0.010	0.008	0.022	0.012	0.010	0.225
1810	0.068	0.026	0.008	0.031	-	0.013	0.235
1800	0.080	0.046	0.005	0.038	-	0.013	0.233
1790	-	-	-	-	-	-	0.239

Panel b: Change in BW Ratio

	IL	IN	OH	MI	WI	OLD NW	US
1880-90	0.000	0.001	0.001	0.002	-0.001	-0.001	0.016
1870-80	0.004	0.005	0.001	0.001	0.000	0.002	0.006
1860-70	0.007	0.006	0.008	0.001	0.000	0.005	0.020
1850-60	-0.002	0.003	0.003	0.003	-0.001	-0.001	0.021
1840-50	-0.002	0.001	0.001	0.003	-0.004	0.000	0.016
1830-40	-0.007	0.000	0.001	0.005	-0.012	-0.001	0.019
1820-30	-0.010	0.001	0.002	0.013	0.006	0.001	0.004
1810-20	-0.042	0.017	0.000	0.010	-	-0.003	0.010
1800-10	-0.013	0.019	0.004	0.007	-	0.000	0.002
1790-1800	-	-	-	-	-	-	0.006

Source: Gibson & Jung, 2002.

While we do not have comprehensive data on internal migration, Myrdal (1999 [1944]) points out that the amount of black migration from overseas was virtually zero after the cessation of the Atlantic Slave Trade in 1808. Ergo, it is safe to assume that state-level changes in black population are a result of births, deaths, and internal migration. If we assume constant birth and rates for blacks across states, we can proxy for migration by examining the difference between the percentage change in black population for a state and the percentage change in black population for the country as a whole. This yields the following estimates of net migration for the 19th century:

Table 4: Migration into and out of the Old Northwest expressed as deviations from national average, 1800-1890

	IL	IN	OH	MI	WI	OLD NW	US
1880-90	9.5%	1.7%	-4.5%	-12.7%	-23.1%	-0.6%	13.5%
1870-80	26.4%	24.9%	-8.5%	-7.4%	-7.0%	5.6%	34.9%
1860-70	267.2%	105.0%	62.5%	64.4%	70.6%	95.0%	9.9%
1850-60	18.3%	-20.6%	23.0%	141.2%	62.3%	18.9%	22.1%
1840-50	11.7%	30.5%	19.1%	238.7%	197.4%	27.4%	26.6%
1830-40	41.4%	74.0%	57.8%	185.3%	182.8%	61.4%	23.4%
1820-30	42.1%	124.3%	71.3%	14.4%	245.0%	75.1%	31.4%
1810-20	47.3%	96.8%	120.1%	-19.6%	-28.6%	94.1%	28.6%
1800-10	289.3%	410.3%	821.6%	-33.9%	-37.5%	406.4%	37.5%
1790-1800	-	-	-	-	-	-	32.3%

This gives us three straightforward historical indices of demographic change during the 19th century: percentage change in black population, changes in the black/white ratio, and estimated net migration. Historians (Litwack, Berwanger, Zilversmit) contend that these changes were determined by traditional economic considerations (like wages, prospective employment, and agricultural opportunities), and that these considerations rendered institutional restrictions ineffective. To test these

propositions, I estimate the following linear model using data for 35 states from the 1850, 1860, and 1870 censuses.²³

Demographic Change =

$$\alpha_i * \text{Decade}_i + \beta_1 * \text{Exclusion} + \beta_2 * \text{Bond} + \beta_3 * \text{Slave} + \beta_4 * \text{PCW} + \beta_5 * \text{Impacres} + \beta_5 * \ln(\text{initial Black pop}) + \varepsilon$$

with the variables defined as follows:

* “decade_i” is a dummy for the decade in which the data is generated (the 1850’s and 1860’s). I expect the coefficient to be different across decades because of the conflict and civil upheaval that occurred during the 1860’s.

* “exclusion” is a dummy variable that denotes whether or not a state has an exclusion statute in place. These states include Iowa, Indiana, Illinois, Kentucky, Virginia, North Carolina, and Alabama. At this point, I have yet to disentangle free exclusion states from slave exclusion states.

* “Bond” is the dollar value of the bond free blacks needed to post to move into a state.

* “PCW” is per-capita wages in non-agricultural employments.

* “Impacres” is the number of improved acres of farmland within a territory. If the historians are correct, this should be the most important determinant of migration.

* $\ln(\text{initial Black pop})$ is the logarithm of black population at the beginning of a period (in this case, the 1850 and 1860 censuses). Many feared that high black populations would induce high levels of migration because blacks would naturally be drawn to areas with high black populations—technically speaking, they feared agglomeration externalities that would facilitate high levels of black migration.

I ascertain the effects of these variables on different measures of demographic change using generalized least-squares techniques with White correction for heteroskedasticity and obtain the results reported in Table 5 with the caveat that these results have not been tested for the usual problems that plague econometric analysis.

While preliminary results seem to confirm the historians’ hypothesis—that traditional economic considerations (in this case, agricultural opportunities as manifested in changes in improved acreage) played a significant role in determining black

²³ 1850 offers the earliest state-level data on manufacturing and agricultural variables, and the Black Laws had been repealed by the 1870 census. Furthermore, the 1850’s encapsulate three important transitions: the crisis of disunion, secession and the Civil War, and early reconstruction.

demographic changes during the mid-19th century—several characteristics of the coefficients (as estimated) serve as grounds for suspicion. It isn't surprising that the decade constants are significant, but the positive (albeit insignificant) coefficient for the exclusion statute in the “net migration” regression indicates that these results cannot be taken at face value. Furthermore, it is reasonable to infer that “black population at beginning of period” and the slavery dummy should be collinear; the fact that they have different signs is puzzling.

Table 5: GLS regressions of Demographic Changes on Several Variables

	Percent Change in Black Population	Net Migration	Percent Change in Black/White Ratio
<i>Decade 1 (1850's)</i>	1.756*** (0.531)	1.544*** (0.580)	-0.011 (0.014)
<i>Decade 2 (1860's)</i>	2.330*** (0.588)	1.923*** (0.688)	-0.015 (0.014)
<i>Exclusion Statute</i>	-0.254 (0.212)	1.637 (1.668)	-0.048** (0.020)
<i>Bond Requirement</i>	0.001 (0.001)	-0.002 (0.003)	0.000 (0.000)
<i>Slavery</i>	0.985*** (0.293)	-0.500 (1.228)	0.008 (0.002)
<i>Change in Per-Capita Wages</i>	-0.281 (0.234)	0.159 (0.521)	0.017 (0.013)
<i>Change in Improved Acreage</i>	0.039*** (0.004)	0.037*** (0.005)	0.000 (0.000)
<i>Black Population at Beginning of Period</i>	-0.180*** (0.049)	-0.122** (0.062)	0.002 (0.002)
<i>R-Squared</i>	0.595	0.191	0.117
<i>Adjusted R-Squared</i>	0.549	0.100	0.018

Changes expressed as percentages. * denotes significance at 10% level, ** denotes significance at 5% level, *** denotes significance at 1% level. Standard errors are reported in parentheses.

The significance of the “exclusion” dummy in the final regression suggests that economic considerations may have induced *general* migration (as models of factor price convergence would predict, labor moves from low- to high-wage areas), but the existence of an exclusion statute may have retarded black migration somewhat and led to a net decrease in the black/white ratio. It is not surprising that the coefficient for slavery is significant in the first regression because slaves tended to be relatively immobile. The aforementioned historians have contended that the natural rate of growth for black populations in slave states (birth rate minus death rate) was higher than the rate of growth for free states. This violates the earlier assumption of constant natural growth rates across states, but removing the assumption would only be to admit that net migration in slave states is overstated and net migration in free states is understated. The results on migration are not weakened.

As expected, “change in improved acreage” was highly correlated with changes in black population and net migration, and this is the key finding.²⁴ As historians claimed, the most significant determinants of changes in the black population were changes in agricultural opportunities. It is not surprising that “black population at beginning of period” was significant for the first two regressions; however, it is alarming that this coefficient would be negative. Black population is highly correlated with the slave dummy, and it is surprising that we would observe a negative coefficient for the variable. This suggests that the model specification is incorrect.

In sum, there may be problems with coefficient estimates in the first-run regressions; this remains to be tested. However, the most important insight is robust

²⁴ The significance of “improved acreage” is robust across a variety of specifications.

across a range of specifications: changes in agricultural opportunity, rather than institutional restrictions, were responsible for demographic changes.

This still leaves a question unanswered: what of Indiana in the 1850's? Is Litwack's hypothesis, that Indiana's near-zero growth in black population was determined by a lack of agricultural and industrial sophistication relative to the rest of the Old Northwest, correct? Even though the coefficient for "exclusion" is insignificant in two of the above regressions, the data do not support Litwack's hypothesis; it turns out that, while per-capita wages were lower in Indiana than in the other states of the Old Northwest, Indiana had more improved acres of farmland and produced more manufactured goods than the rest of the states of the Old Northwest (with the exception of Ohio). This indicates that Indiana's 1.5% increase in black population cannot be ascribed to relative agricultural or industrial backwardness. At the moment, the question is unresolved.

Table 6: Indiana and the Old Northwest in the 1850's: Is Litwack Right?

	Percentage Increase in Black Population	Per-Capita Wages	Improved Acreage	Value of Production
Indiana	1.5%	\$258.95	5,046,543	18,725,423
Illinois	40.3%	\$285.87	5,039,545	16,534,272
Ohio	45.1%	\$261.54	9,851,493	62,692,279
Michigan	163.2%	\$290.79	1,929,110	11,169,002
Wisconsin	84.4%	\$281.24	1,045,499	9,293,068

Source: Dodd (1993)

IV. Conclusions and Further Directions

This paper has done two things. First, it has accounted for factors that induced citizens of the Old Northwest to adopt the Black Laws. Second, it has shown that traditional economic factors (agricultural opportunities in particular), rather than formal

institutional restrictions on black migration, accounted for changes in the black populations of the several States in the mid-19th century.

While a simple linear regression can show us what factors contributed to a certain phenomenon, it cannot tell us *why* these factors are important. Whether the Black Laws were effectively enforced seems clear; it appears that, generally, they were not. However, this failure, and the mystery of Indiana's supposed success, remains to be explained. In other words, the empirical portion of the paper has shown that the exclusion statutes in the Old Northwest were not enforced. It has yet to explain why. To assemble and analyze the data necessary to account for this failure remains to be done.

APPENDIX A: ORDINANCE OF 1787, ARTICLE 6

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *provided always*, That any person escaping into the same, from who labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed, and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July in the year of our Lord 1787, and their sovereignty and independence the twelfth.

APPENDIX B: IMMIGRATION RESTRICTIONS IN OHIO²⁵

AN ACT TO REGULATE BLACK AND MULATTO PERSONS, APPROVED 1/5/1804, LAWS OF OHIO.

Section 1. Be it enacted by the General Assembly of the State of Ohio, that from and after the first day of June next, no black or mulatto person, shall be permitted to settle or reside in this state, unless he or she shall first produce a fair certificate from some court with the United States, of his or her actual freedom, which certificate shall be attested by the clerk of said court, and the seal thereof annexed thereto, by the said clerk.

Section 2. That every black or mulatto person residing within this state, on or before the first day of June, one thousand eight hundred and four, shall enter his or her name together with the name or names of his or her children, in the clerk's office in the county in which he, she, or they reside, which shall be entered on record by said clerk, and thereafter the clerk's certificate of such record shall pay to the clerk twelve and a half cents: provided nevertheless, that nothing in this act contained shall bar the lawful claim to any black or mulatto person.

Section 3. That no person or persons' residents of this state, shall be permitted to hire, or in any way employ any black or mulatto person, unless such black or mulatto person shall have one of the certificates as aforesaid, under pain of forfeiting and paying any sum not less than ten nor more than fifty dollars, at the discretion of the court, for every such offense, one half thereof for the use of the informer, and the other half for the use of the state; and shall moreover pay to the owner, if any there be, of such black or mulatto person, the sum of fifty cents for every day he, she or they shall in otherwise employ, harbor or be recoverable before any court having cognizance thereof.

Section 4. That if any person or persons shall harbor or secret any black or mulatto person, the property of any person whatever, or shall in anywise hinder or prevent the lawful owner or owners from retaking and possessing his or her black or mulatto servant or servants, shall, upon conviction thereof, by indictment or information, be fined in any sum not less than ten nor more than fifty dollars, at the discretion of the court, one-half thereof for the use of the informer and the other half for the use of the state.

Section 5. That every black or mulatto person who shall come to reside in this state with such certificates as is required in the first section of this act, shall, within two years, have the same recorded in the clerk's office, in the county in which he or she means to reside, for which he or she shall pay to the clerk twelve and a half cents, and the clerk shall give him or her a certificate of such record.

²⁵ Livingston and Norton both make reference to an alleged Ohio law expelling the state's entire black population. Norton's endnote on the topic refers the reader to pp. 180-184 of McManus; however, such a law isn't mentioned in McManus. It seems reasonable to infer that this may be a misreading of the 1829 attempt to enforce the black laws in Cincinnati's "Little Africa."

Section 6. That in case any person or persons, his or their agent or agents, claiming any black or mulatto person that now are, or hereafter may be in this state, may apply, upon making satisfactory proof that such black or mulatto person or persons is the property of him or her who applies to any associate judge or justice of the peace within this state, the associate judge or justice is thereby empowered and required, by his precept, to direct the sheriff or constable to arrest such black or mulatto person or persons, and deliver the same in the county or township where such officers shall reside, to the claimant or claimants or his or their agents, for which service the sheriff or constable shall receive such compensation as they are entitled to receive in other cases for similar services.

Section 7. That any person or persons who shall attempt to remove or shall remove from this state, or who shall aid and assist in removing, contrary to the provisions of this act, any black or mulatto person or persons, without first proving as herein before directed, that he, she, or they, is or are legally entitled to so do, shall on conviction thereof, before any court having cognizance of the same, forfeit and pay the sum of one thousand dollars, one-half to the use of the informer and the other half to the use of the state to be recovered by action of debt, *qui tam*, or indictment, and moreover be liable to the action of the party injured.

AN ACT TO AMEND THE LAST ACT NAMED "AN ACT TO REGULATE BLACK AND MULATTO PERSONS" APPROVED 1/25/1807, LAWS OF OHIO

Section 1. Be it enacted by the General Assembly of the State of Ohio, that no Negro or mulatto person shall be permitted to emigrate into, and settle within this state, unless such Negro or mulatto person shall, within twenty days thereafter, enter into bond with two or more freehold sureties, in the penal sum of five hundred dollars, before the clerk of the court of common pleas, of the county in which such Negro or mulatto person may wish to reside (to be approved of by the clerk), conditioned for the good behavior of such Negro or mulatto, and moreover to pay for the support of such person, in case he, she, or they should thereafter be found within any township of this state, unable to support themselves. And if any Negro or mulatto person shall migrate in this state, and not comply with the provisions of this act, it shall be the duty of the overseer of the poor of the township where such Negro or mulatto person may be found to remove immediately such black or mulatto person, in the same manner as is required in the case of paupers.

Section 2. That it shall be the duty of the clerk, before whom such bond may be given as given aforesaid, to file the same in his office, and give a certificate thereof to such Negro or mulatto person; and the said clerk shall be entitled to receive the sum of one dollar for the bond and certificate aforesaid, on the delivery of the certificate.

Section 3. That if any person, being a resident of this state, shall employ, harbor or conceal any such Negro or mulatto person aforesaid, contrary to the provisions of the first section of this act, any person offending shall forfeit and pay, for every such offence, a sum not exceeding one hundred dollars, the one half to the informer, and the other half for the use of the poor of the township in which such person may reside, to be recovered by action of debt, before any court having competent jurisdiction; and moreover be liable

for the maintenance and support of such Negro or mulatto, provided he, she or they shall become unable to support themselves.

Section 4. That no black or mulatto person or persons shall hereafter be permitted to be sworn or give evidence in any court of record, or elsewhere, in this state, in any cause depending, or matter of controversy, where either party to the same is a white person.

Section 5. That so much of the act, entitled “an act to regulate black and mulatto persons,” as is contrary to this act, together with the sixth section thereof, be and the same is hereby repealed. This act shall take effect and be in force from and after the first day of April next.

AN ACT TO AMEND THE ACT ENTITLED “AN ACT TO REGULATE BLACK AND MULATTO PERSONS,” PASSED 1/5/1804

Section 1. Be it enacted by the General Assembly of the State of Ohio, That in all cases wherein a certificate is granted to any black or mulatto person, resident within this state, agreeably to the second section of the act to which this is an amendment, the clerk of the court issuing the same shall make or cause to be made, a record of the same, in a book provided for that purpose, and carefully preserved in said office, and on such record of the same being made, the said clerk shall endorse thereon the number of the same, the book in which, and the page of pages where such records is made, and shall forthwith, if required, deliver over the same to the individual for whose benefit it was intended, and it shall furthermore be the duty of the presiding judge of such circuit in which said certificate may be issued, on application being made to him by the holder of the same, to endorse thereon his certificate of the genuineness of the same; provided, that t nothing in this act contained shall be so construed as to bar the lawful claim to any black or mulatto person thus obtaining a certificate with this state.

APPENDIX C: IMMIGRATION RESTRICTIONS IN INDIANA

CONSTITUTION OF INDIANA, ARTICLE 13, 1851

Section 1. No Negro or Mulatto shall come into, or settle in, the State, after the adoption of this Constitution.

Section 2. All contracts made with any Negro or Mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person, who shall employ such Negro or Mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars.

Section 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into the execution, shall be set apart and appropriated for the colonization of such Negroes and Mulattoes, and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

Section 4. The General Assembly shall pass laws to carry out the provisions of this article.

AN ACT TO ENFORCE THE 13TH ARTICLE OF THE CONSTITUTION, APPROVED 6/18/1852, REVISED STATUTES.

Section 1. Be it enacted by the General Assembly of the State of Indiana, that it shall not be lawful for any Negro or mulatto to come into, settle in, or become an inhabitant of this state.

Section 2. The clerks of the several circuit courts in this state shall give notice, by publication in the newspaper published in their respective counties having the greater circulation, and if no newspaper be published therein, then by printed hand-bills posted up in three of the most public places in each township of such county, requiring all negroes and mulattoes who were inhabitants of the state prior to the first day of November, AD 1851, and entitled to reside therein, to appear before him for registry.

Section 3. It shall be the duty of each clerk of the said circuit courts to provide a suitable book, to be called the register of negroes and mulattoes, in which he shall record the name, age description, place of birth and residence of each and every mulatto who may present himself or herself before him for the purpose of being registered, and, also, the names of the witnesses by whom the right of such Negro or mulatto to reside in the State of Indiana shall have been proven.

Section 4. The clerk of the said circuit court, when any Negro or mulatto shall come before him for the purpose of being registered, shall have power to cause to come before him such witnesses as may be necessary to prove the right of inhabitation of such Negro

or mulatto, by process of subpoena, and shall proceed to hear and determine the right of such Negro or mulatto.

Section 5. When the right of any such Negro or mulatto shall have been proven to the satisfaction of such clerk he shall register the said Negro or mulatto in his register of negroes and mulattoes, and shall also issue to such Negro or mulatto a certificate, under the seal of the said court and attested by such clerk, setting forth the facts contained in such register, which certificate shall be conclusive evidence of the facts therein stated in all prosecutions against the employers of negroes or mulattoes, unless it is shown that said employer had notice that the same was obtained by fraud or other undue means or was not genuine and the same shall be prima facie evidence only in all other cases, and shall be issued to such Negro or mulatto without charge.

Section 6. All contracts made with negroes or mulattoes who shall have come into the State of Indiana subsequent to the first day of November AD 1851, are hereby declared null and void.

Section 7. Any person who shall employ a Negro or mulatto who shall have come into the state of Indiana subsequent to the thirty-first day of October in the year 1851, or shall hereafter come into said state, or who shall encourage such Negro or mulatto to remain in the state, shall be fined in any sum not less than ten dollars nor more than five hundred dollars.

Section 8. This act shall apply only to contracts made with negroes and mulattoes subsequent to the passage of this act.

Section 9. Any Negro or mulatto who shall come into or settle in this state contrary to, or in violation of the provisions of the constitution, and of the first section of this act, shall be fined in any sum less than ten, nor more than five hundred dollars.

APPENDIX D: MISCEGENATION

Illinois Revised Statutes, 1845. Section 2:

No Person of color, Negro or mulatto, of either sex, shall be joined in marriage with any white person, male or female, in this state;

APPENDIX E: IMMIGRATION RESTRICTIONS IN ILLINOIS

AN ACT TO PREVENT THE MIGRATION OF FREE NEGROES AND MULATTOES INTO THIS TERRITORY AND FOR OTHER PURPOSES, APPROVED 12/8/1813, LAWS OF ILLINOIS.

Section 1. Be it enacted by the Legislative Council and House of Representatives of the Illinois Territory that it shall not be lawful for any free Negro or mulatto to migrate in this territory, and every free Negro or mulatto who shall come into this Territory contrary to this act shall and may be apprehended and carried by an citizen before some justice of the peace of the county where he shall be taken; which Justice is hereby authorized to examine, and order to leave the Territory every such free Negro or mulatto, which said free Negro or mulatto shall be allowed from the time of his examination before the justice of the peace fifteen days to depart from the territory, and if after the expiration of the said fifteen days he or she shall be found in the territory he or she shall be carried before a justice of the peace who shall order him or her to be whipped on his or her bare back not exceeding thirty-nine stripes nor less than twenty-five stripes and if he or she shall thereafter remain in the territory fifteen days he or she may be punished in the same manner as aforesaid and so on as long as he or she shall refuse or fail to depart from the territory.

Section 2. Be it further enacted that all free negroes and mulattoes now residing in the territory shall within six months after the passage of this act apply to the clerk of the court of common pleas of the county in which such Negro or mulatto may reside to be registered and numbered by the clerk, which register shall specify the name, age, color, and stature of said free Negro or mulatto, a copy of which register signed by the clerk shall be delivered to the said free Negro or mulatto for which the clerk shall demand of him or her the sum of fifty cents—provided however that no Negro or mulatto as aforesaid, shall claim the benefit of this section until he, she, or they produce to such clerk satisfactory evidence that he, she, or they is, or are entitled to freedom—provided also that no Negro or mulatto who is claimed as a servant or slave by any person or persons shall be entitled to the benefit of this section.

Section 3. Be it further enacted that if any such free Negro or mulatto being of the age of twenty-one years shall neglect to procure such certificate it shall be the duty of any justice of the peace of the county wherein he or she may be found to order him or her to leave the territory as in the first section of this act, and the said free Negro or mulatto shall be subject to the same penalties for refusing to leave the territory as is provided in the first section of this act.

Section 4. Be it further enacted that if any such free Negro or mulatto shall hereafter be convicted before any justice of the peace of the county where the offence was committed, of steaing, or harboring runaway negroes or mulattoes or slaves belonging to persons either in this territory or elsewhere. The said justice of the peace whose duty it shall be to take cognizance of such offenses, shall order him or her to receive on his or her bare back not less than thirty-nine nor more than fifty lashes and the justice shall order him or her to

depart from territory in thirty days, and if such free Negro or mulatto shall neglect to depart accordingly, he or she shall be dealt with in the same manner as is provided in the first section of this act.

Section 5. Be it further enacted that any such free Negro or mulatto who is required by this act to register with the said clerk in the same manner all such free negroes or mulattoes residing with him or her as may be under the age of twenty-one years. And on failure thereof such free negroes and mulattoes being under the age of twenty-one years may be carried before the court of common pleas of the county, whose duty it shall be to bind them out until they attain the age of twenty-five years. This act to commence and be in force from and after the passage thereof.

ILLINOIS CONSTITUTION, 1848. ARTICLE 14.

"The General Assembly shall, at its first session under the amended constitution, pass such laws as will effectually prohibit free persons of color from immigrating to and settling in this state; and to effectually prevent the owners of slaves from bringing them into this state for the purpose of setting them free."²⁶

AN ACT TO PREVENT THE IMMIGRATION OF FREE NEGROES INTO THIS STATE, APPROVED 2/12/1853, LAWS OF ILLINOIS

Section 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, That if any person or persons shall bring, or cause to be brought into this state, any Negro or mulatto slave, whether said slave is set free or not, shall be liable to an indictment, and, upon conviction thereof, be fined for every such Negro or mulatto, a sum not less than one hundred dollars, nor more than five hundred dollars, and imprisoned in the county jail not more than one year, and shall stand committed until said fine and costs are paid.

Section 2. When an indictment shall be found against any person, or persons, who are not residents of this state, it shall be the duty of the court before whom said indictment is pending, upon affidavit being made and filed in said court by the prosecuting attorney, or any other credible witness, setting forth the non-residence of said defendant, to notify the governor of this state, by causing the clerk of said court to transmit to the office of the secretary of state a certified copy of said indictment and affidavit, and it shall be the duty of the governor, upon the receipt of said copies, to appoint some suitable person to arrest said defendant or defendants, in whatever state or county he or they may be found, and to commit him or them to the jail of the county in which said indictment is pending, there to remain and answer said indictment, and be otherwise dealt with in accordance with this act. And it shall be the duty of the governor to issue all necessary requisitions, writs, and

²⁶ From

<http://archive.ncsa.uiuc.edu/Cyberia/RiverWeb/Projects/Ambot/Archives/vignettes/people/Black%20Illinois-19th%208B9.html>; IL archive of vignettes. It is also important to note that different cities had their own "ordinances" restricting black mobility, even postwar. Blacks were used as strikebreakers throughout IL, and state law at the turn of the century made it illegal to bring people into the state for the purpose of breaking a strike.

papers to where such defendant or defendants may be found: Provided, that this section shall not be construed so as to affect persons, or slaves, bona fide traveling through this state from and to any other state in the United States.

Section 3. If any Negro, or mulatto, bond or free, shall hereafter come into this state and remain ten days, with the evident intention of residing in the same, every such Negro or mulatto shall be deemed guilty of a high misdemeanor, and for the first offence shall be fined the sum of fifty dollars, to be recovered before any justice of the peace in the county where said Negro or mulatto may be found. Said proceedings shall be in the name of the people of the state of Illinois, and shall be tried by a jury of twelve men. The person making the information or complaint shall be a competent witness upon said trial.

Section 4. If said Negro or mulatto shall be found guilty, and the fine assessed be not paid forthwith to the justice of the peace before whom said proceedings were had, it shall be the duty of said justice to commit said Negro or mulatto to the custody of the sheriff of said county, or otherwise keep him, her, or them in custody; and said justice shall forthwith advertise said Negro or mulatto, by posting up notices thereof in at least three of the most public places in his district, which said notices shall be posted up for ten days, and on the day and at the time and place mentioned in said advertisement, the said justice shall, at public auction, proceed to sell said Negro or mulatto to any person or persons who will pay said fine and costs for the shortest time; and said purchaser shall have the right to compel said Negro or mulatto to work for and serve out said time, and he shall furnish said Negro or mulatto with comfortable food, clothing, and lodging during said servitude.

Section 5. If said Negro or mulatto shall not within ten days after the expiration of his or her, or their time of service as aforesaid, leave the state, he, she or they shall be liable to a second prosecution, in which the penalty to be inflicted shall be one hundred dollars, and so on for every subsequent offence the penalty shall be increased fifty dollars over and above the last penalty inflicted, and the same proceedings shall be had in each case as is provided for in the preceding sections for the first offence.

Section 6. Said Negro or mulatto shall have a right to take an appeal to the circuit court of the county in which said proceedings shall have been had, within five days after the rendition of the judgment, before the justice of the peace, by giving bond and security, to be approved by the clerk of said court to the people of the state of Illinois, and to be filed in the office of said clerk within said five days, in double the amount of said fine and costs, conditioned that the party appealed will personally be and appear before said circuit court, at the next term thereof, and not depart said court without leave, and will pay said fine and all costs, if the same shall be so adjudged by said court; and said security shall have the right to take said Negro or mulatto into custody, and retain the same until the order of said court is complied with. And if the judgment of the justice of the peace be affirmed in whole or in part, and said Negro or mulatto be found guilty, the said circuit court shall thereupon render judgment against said Negro or mulatto and the security or securities on said appeal bond, for the amount of fine so found by the court, and all costs of suit, and the clerk of said court shall forthwith issue an execution against

said defendant and security as in other cases, and the sheriff or other officer to whom said execution is directed shall proceed to collect the same by sale or otherwise: Provided, that this section shall not be so construed as to give the right to retain the custody of said Negro or mulatto for a longer time than ten days after the rendition of said judgment by said circuit court.

Section 7. In all cases arising under the provisions of this act, the prosecuting witness, or person making the complaint and prosecuting the same, shall be entitled to one half of the fine so imposed and collected, and the residue of said fine shall be paid into the county treasury of the county in which said proceedings were had; and said fines, when so collected, shall be received by said county treasurer and kept by him as a distinct and separate fund, to be called the "charity fund," and said fund shall be used for the express and only purpose of relieving the poor of said county, and shall be paid out by said treasurer upon the order of the county court of said county, drawn upon him for that purpose.

Section 8. If after any Negro or mulatto shall have been arrested under the provisions of this act, any person or persons shall claim any such Negro or mulatto as a slave, the owner, by himself, or agent, shall have a right, by giving reasonable notice to the officer or person having the custody of said Negro or mulatto, to appear before the justice of the peace and prove his or their right to the custody of said Negro or mulatto as a slave, and if said justice of the peace shall, after hearing the evidence, be satisfied that the person or persons claiming said Negro or mulatto, in accordance with the laws of the United States passed upon this subject, he shall, upon the owner or agent paying all costs up to the time of claiming said Negro or mulatto, and the costs of providing the same, and also the balance of the fine remaining unpaid, give to said owner a certificate of said facts, and said owner or agent so claiming shall have a right to take and remove said slave out of this state.

Section 9. If any justice of the peace shall refuse to issue any writ of process necessary for the arrest and prosecution of any Negro or mulatto, under the provisions of this act, upon complaint being made before said justice by any resident of his county, and his fees for said service being tendered him, shall be deemed guilty of nonfeasance in office, and upon conviction thereof punished accordingly, and in all cases where the jury find for the Negro or mulatto, or that he, she, or they are not guilty under the provisions of this act, the said justice of the peace shall proceed to render judgment against the prosecuting witness, or person making the complaint, and shall collect the same as other judgments: Provided, that said prosecuting witness, or person making said complaint, in case judgment is rendered against him, shall have a right to take an appeal to the circuit court, as is provided for in this act in case said Negro or mulatto is found guilty.

Section 10. Every person who shall have one-fourth Negro blood shall be deemed a mulatto.

Section 11. This act shall take effect and be in force from and after its passage.

REFERENCES

- Apthecker, Herbert, ed. *A Documentary History of the Negro People of the United States*. New York: Citadel Press, 1951.
- Baily, Marilyn. "From Cincinnati, Ohio to Wilberforce, Canada: A Note on Antebellum Colonization." *Journal of Negro History*, vol. 58 no. 4 (October 1973) pp. 427-440.
- Berthoff, Rowland. "Conventional Mentality: Free Blacks, Women, and Business Corporations as Unequal Persons, 1820-1870." *Journal of American History*, vol. 76, no. 4 (December 1989) pp. 753-784.
- Cha-Jua, Sundiata Keita. *America's First Black Town: Brooklyn, Illinois, 1830-1915*. Urbana: University of Illinois Press.
- Copi, Irving M. *Introduction to Logic*, 5th ed. New York: Macmillan Publishing Co., 1978.
- Cramer, Clayton E. *Black Demographic Data, 1790-1860: A Sourcebook*. Westport: Greenwood Press, 1997.
- DiLorenzo, Thomas J. "The Consolidation of State Power via Reconstruction, 1865-1890." *Journal of of Libertarian Studies*, vol. 16, no. 2, Spring 2002. pp. 139-161.
- Dodd, Donald B. *Historical Statistics of the States of the United States: Two Centuries of the Census, 1790-1990*. Westport, CT: Greenwood Press, 1993.
- Ende, Eleanor von and Thomas Weiss. "Consumption of Farm Output and Economic Growth in the Old Northwest, 1800-1860." *Journal of Economic History*
- Ford, Thomas. *A History of Illinois*. Chicago: SC Griggs & Co., 1854.
- Gibson, Campbell and Kay Jung. "Historical Census Statistics on Population Totals By Race, 1790 to 1990, and By Hispanic Origin, 1970 to 1990, For The United States, Regions, Divisions, and States." Census Bureau Working Paper No. 56, September 2002. Available online <http://www.census.gov/population/www/documentation/twps0056.html>.
- Greene, Larry A. "Blacks." In Porter, Glenn, Ed. *Encyclopedia of American Economic History*. New York: Charles Scribner's Sons, 1980.
- Greenwood, Michael J. "Research on Internal Migration in the United States: A Survey." *Journal of Economic Literature*, vol. 13, no. 2 (June 1975), 397-433.
- Inter-university Consortium for Political and Social Research. HISTORICAL, DEMOGRAPHIC, ECONOMIC, AND SOCIAL DATA: THE UNITED STATES, 1790-

1970 [Computer file]. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor], 197?.

Lampard, Eric E. "Urbanization." In Porter, Glenn, Ed. *Encyclopedia of American Economic History*. New York: Charles Scribner's Sons, 1980.

Lebergott, Stanley. In Klingaman & Vedder, eds. Citation Forthcoming.

Litwack, Leon F. *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago: University of Chicago Press, 1961).

Livingston, Donald. "A Moral Accounting of the Union and the Confederacy." *Journal of Libertarian Studies*, vol. 16, no. 2, Spring 2002. pp. 57-102.

Marshall, Ray. "Union Structure and Public Policy: The Control of Union Racial Practices." *Political Science Quarterly*, vol. 78, no. 3 (September 1963), 444-458.

McManus, Edgar J. *Black Bondage in the North*. Syracuse: Syracuse University Press, 1973.

Mecklin, John M. "The Philosophy of the Color Line." *American Journal of Sociology*, vol. 19, no. 3 (November, 1913), 343-357.

Middleton, Stephen. *The Black Laws of the Old Northwest: A Documentary History*. Westport: Greenwood Press, 1993.

Myrdal, Gunnar. *An American Dilemma: The Negro Problem and Modern Democracy*. New Brunswick: Transaction Publishers, 1999.

North, Douglass C. *Structure and Change in Economic History*. New York: WW Norton and Company, 1981.

Norton, Ann. *Alternative Americas: A Reading of Antebellum Political Culture*. Chicago: University of Chicago Press, 1986.

Roseboom, Eugene H. and Francis P. Weisenburger. *A History of Ohio*. Columbus: The Ohio State Archaeological and Historical Society, 1953.

Scoville, Warren C. "Spread of Techniques: Minority Migrations and the Diffusion of Technology." *Journal of Economic History*, vol. 11, no. 4 (Autumn, 1951), 347-360.

Thornbrough, Gary and Dorothy Riker, eds. *Journals of the General Assembly of Indiana Territory*. vol. XXXII, Indianapolis: Indiana Historical Commission, 1950. pp. 236-37.

Vedder, Richard K. and Lowell E. Galloway. "Migration and the Old Northwest." In Klingaman, David C. and Richard K. Vedder, eds. *Essays in Nineteenth Century*

Economic History: The Old Northwest. Athens: Ohio University Press, 1975. pp. 159-176.

Williams, George G. *History of the Negro Race in America From 1619 to 1880.* New York: G.P. Putnam's & Sons, 1882.

Zilversmit, Arthur. *The First Emancipation: The Abolition of Slavery in the North* (Chicago: University of Chicago Press, 1967), 14-17.

Voegeli, V. Jacque. *Free But Not Equal: The Midwest and the Negro During the Civil War.* Chicago: University of Chicago Press, 1967.