The Significance of Excluding Slavery from the Old Northwest in 1787

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Fifty-two years before Congress enacted the Northwest Ordinance, the British government excluded slaves from the colony of Georgia.[1] Although this precedent has been conspicuously ignored in debates over the meaning of Article VI of the Northwest Ordinance, the parallels are intriguing. In both cases the prohibition of slavery was adopted as part of a separate legislative act and not incorporated in a founding charter or national Constitution. While the intentions of the Confederation Congress are more obscure than those of James Oglethorpe and the trustees of Georgia, it is clear that neither measure was expected to endanger slavery in adjacent territories or challenge the legitimacy of slaveholding in general. The 1735 prohibition allowed Carolinians to reclaim blacks who escaped into Georgia, just as Article VI provided for the return of fugitives "to the person claiming his or her labor or service."

The advocates of a free-soil Georgia were anything but abolitionists. Oglethorpe was deputy governor of the slave-trading Royal African Company and also owned slaves on a Carolina plantation. The prohibition act provided for the sale of any unclaimed blacks found in the colony. The trustees were to receive the proceeds. In 1787, as far as is known, no southern members of the Congress of the Confederation voiced the slightest disapproval of Article VI, which a committee of five, including a South Carolinian and two Virginians, suddenly added at the last minute to the finished text of the Northwest Ordinance.

Staughton Lynd and Paul Finkelman, in their masterly studies of Article VI, have underscored the contrast between the har-

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[1] For the citation of primary sources and a brief discussion of excluding slaves from Georgia, see David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca, N.Y., 1966), 144-50.

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monious congressional deliberations and the nearly contemporaneous debates in the Constitutional Convention.[2] From July 9 to July 12, 1787, sectional anger erupted at Philadelphia as the convention argued about the three-fifths rule for apportioning representatives in the House of Representatives. A few northerners objected that allowing representation for slaves would encourage further slave importation from Africa. Delegates from South Carolina and Georgia demanded constitutional protection for slavery as the price for union. Subsequent conflicts in the convention and in the First Congress under the new Constitution showed how explosive the South would become in the face of any perceived threat to its most valuable form of property. Yet on July 13, the day after the Constitutional Convention provisionally accepted the three-fifths compromise, the Continental Congress, chaired by a southerner, adopted the Northwest Ordinance with its newly added Article VI, which had not appeared in the draft of July 11. A northerner cast the single dissenting vote. When the First Congress reenacted the Ordinance in 1789, the southerners who would soon become so outraged by cautiously worded antislavery petitions seem not to have sensed an abolitionist Trojan Horse or entering wedge.

Parallels between the slavery exclusions of 1735 and 1787 extend beyond slaveholder concurrence. Both the British and American governments hoped to attract enterprising white migrants who would rapidly settle a territory that reached toward a Spanish frontier. Some of the planners, at least, sought white settlers from a social class that could not afford to buy slaves—settlers who, as experience had shown, had been deterred from emigrating to the more prosperous plantation regions. Oglethorpe and his philanthropic supporters were thinking of British debtors and German peasants who could contribute to imperial self-sufficiency by producing such commodities as silk and wine. The later American developers were thinking of a less debased class of yeoman farmers who would clear the land of Indians and trees, cultivate grains, build roads, towns, churches, and schools, and eventually be capable of self-government. Despite this difference, both blueprints envisioned a fusion of individual opportunity and national interest that depended on maintaining the dignity of physical labor. One of

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[2] Paul Finkelman, "Slavery and the Northwest Ordinance: A Study in Ambiguity," *Journal of the Early Republic*, VI (Winter, 1986), 343-70; Staughton Lynd, "The Compromise of 1787," *Political Science Quarterly*, LXXXI (June, 1966), 225-50. See also J. David Griffin, "Historians and the Sixth Article of The Ordinance of 1787," *Ohio History*, LXXVIII (Autumn, 1969), 252-60; Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington, 1987), 85, 109, 109-32; Donald L. Robinson, *Slavery in the Structure of American Politics, 1765–1820* (New York, 1971), 378-83, 403; David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca, N.Y., 1975), 152-59; Edward Coles, *History of the Ordinance of 1787* (Philadelphia, 1856).

the motives for excluding slavery, at least in the initial period of settlement, was the fear that whites would be demoralized and corrupted by the presence of black slave competitors.

Far more important, in the case of Georgia, was the need for a secure buffer zone between South Carolina and Spanish Florida. The British were alarmed by the Spaniards' success in encouraging black resistance in Carolina and offering a refuge for fugitive slaves. This anxiety deepened when Oglethorpe failed to capture St. Augustine and when the slave unrest exploded in the Stono Rebellion. The Spanish borderlands had a different but no less significant bearing on the Northwest Ordinance. Robert V. Remini, in his inaugural address to this conference, has graphically described the dangers of the mid–1780s, when southwestern settlers were prepared to transfer their allegiance to Spain if Congress refused to recognize their vital need for water transport to the Gulf of Mexico. Most southern leaders put the highest priority on securing from Spain the right to free navigation of the Mississippi River. Whatever tradeoffs led to the acceptance of Article VI, it seems likely that southerners expected the bargain to quiet most northern opposition to rapid westward expansion, including the demand for access to the Mississippi and for the undelayed admission of slaveholding states south of the Ohio River.

But as the trustees of Georgia soon discovered, an act prohibiting slavery is not self-enforcing. In 1735 slavery was universally sanctioned by the law of nations, and black slaves were openly sold and traded in England as well as in every New World colony. Petitions from white settlers in Georgia, including illiterates who could not sign their names, predicted that the colony would sink into ruin unless quickly supplied with black slaves. A few antislavery petitioners spoke of the Africans' natural right to freedom. They also argued that slaves would deprive white laborers and craftsmen of work and endanger the colony with bloody insurrections. But meanwhile, no institutions were effective in preventing Carolina planters from crossing the Savannah River with their slaves or even slave ships from landing their cargoes in Savannah. In 1749 the trustees finally capitulated and asked Parliament to repeal the prohibition.

Paul Finkelman has recently analyzed the ambiguities of the Northwest Ordinance with respect to slavery and has emphasized the failure of Congress to enact any enforcement legislation. As early as July, 1788, the Franco-American slaveholders residing in the territory petitioned Congress to secure their slave property from the effects of what they considered an "Ex post facto law" that seemed to violate the terms of the Treaty of Paris of 1763 and the Virginia land cession of 1784. Like some of the earlier Georgian petitioners, the French settlers contended that the obnoxious law would depopulate parts of the territory. And, in actuality, some of

the more affluent French slaveholders sought security in the Spanish territory across the Mississippi. Although Congress never took action to clarify the status of slaves living in the Old Northwest before 1787, Finkelman points out that the report of a three-member congressional committee that included James Madison "suggests how truly *uncommitted* the Founders were to ending slavery."[3] Governor Arthur St. Clair and other officials conveyed the same reassuring message to the inhabitants of the territory; namely, that Article VI pertained to the future introduction of slaves and was not intended to deprive present inhabitants of property they possessed at the time the Ordinance was passed. As Finkelman and other historians have shown, settlers continued to petition Congress to repeal or modify Article VI, while the territorial governments of Indiana and Illinois tried to attract slaveholders by giving sanction to various forms of involuntary servitude. Until the well-known electoral struggle of 1823–1824, there was a genuine possibility that Illinois would become a slave state. As in colonial Georgia, the issue turned on local conditions and demography. Fortunately, the Northwest was not adjacent to South Carolina and the Atlantic. From Finkelman's forceful arguments it might well be concluded that the Northwest Ordinance was no more significant as an antislavery measure than the British law of 1735 "for rendering the Colony of Georgia more Defencible."

But such a verdict would ignore the extraordinary power of antislavery ideology, which must be distinguished from Garrisonian immediatism. The principle that slavery should be excluded from the virgin West became the core of an antislavery and Republican party ideology that obscured the economic benefits of coerced labor and transformed the moral meaning of national interest. To develop this point I must first review recent reevaluations of slavery as part of a global capitalist economy. I will then turn to the misapprehensions that arise when immediatist standards and expectations are imposed on such measures as the Northwest Ordinance.

Historians have only begun to free themselves from the antislavery assumptions that permeated political economy from the time of Benjamin Franklin and Adam Smith. They still find it difficult to believe that an immoral and flagrantly unjust system of labor could be congruent with long-term economic and material progress. They intuitively reject the claims of Robert W. Fogel and other economists that slave labor was efficient, productive, adaptable, and immensely profitable. Whatever the short-term rewards, in the moral economy of history the sin of slaveholding surely led to soil exhaustion, indebtedness, degenerate livestock, obsolete technol-

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[3] Finkelman, "Slavery and the Northwest Ordinance," 364.

ogy, dilapidated farms, and a society bereft of schools, towns, and enterprise. But this conventional imagery merges many independent variables and confuses the symptoms of an imbalanced economy with economic decline. It also obscures the crucial contributions of black slaves to the growth of a larger, interdependent Atlantic economy. The recent research of David Eltis, Seymour Drescher, Stanley Engerman, Rebecca J. Scott, and other scholars has moved beyond the now conventional view that black slave labor provided the foundation for the wealthiest and most dynamic New World economies before 1800; there is now impressive evidence that the economic importance of slavery *increased* in the nineteenth century along with the soaring global demand for such consumer goods as sugar, coffee, and cotton textiles. This demand could only be met by plantation production and coerced labor, including the hundreds of thousands of indentured Asian workers who eventually replaced many of the emancipated West Indian blacks.[4]

Contrary to traditional dogma, under most circumstances free labor was not cheaper or more productive than slave labor. In most of the New World, in any event, a sufficient supply of free labor was never available. And as the British learned to their dismay after emancipating nearly 800,000 colonial slaves, free laborers were unwilling to accept the plantation discipline and working conditions that made sugar production a highly profitable investment. The British West Indian colonies did not decline in their value to the British economy until the 1820s, when the effects of slave-trade abolition finally began to counteract rising worker productivity. Britain's suicidal, or as Drescher would have it, "econocidal" destruction of the world's leading producers of sugar and coffee provided an extra stimulus to the plantations of Cuba and Brazil and to the illegal slave trade that supplied them with labor.[5] And in Brazil the increasing concentration of slaves on coffee fazendas did not prevent the profitable use of slave labor in such varied enterprises as cattle ranching, food processing, construction, grain and root crop farming, textile manufacturing, jerked beef production, whaling, and even serving as deck hands on South Atlantic slave ships. In mid-nineteenth century Brazil black slavery proved to be compatible with urban life and virtually every urban

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[4] See, especially, David Eltis, *Economic Growth and the Ending of the Transatlantic Slave Trade* (New York, 1987); Rebecca J. Scott, *Slave Emancipation in Cuba: The Transition to Free Labor, 1860–1899* (Princeton, N.J., 1985); Herbert S. Klein, *African Slavery in Latin America and the Caribbean* (New York, 1986); Seymour Drescher, *Capitalism and Antislavery: British Mobilization in Comparative Perspective* (New York, 1987); and Robert W. Fogel's forthcoming *Without Consent or Contract: The Rise and Fall of American Slavery*. I am indebted to Professor Fogel for sending me preliminary drafts of the latter work.

[5] Seymour Drescher, *Econocide: British Slavery in the Era of Abolition* (Pittsburgh, 1977); Eltis, *Economic Growth*.

trade and skill. In midnineteenth century Cuba black slaves were profitably employed in the most capital-intensive and highly mechanized sugar production. In both Cuba and Brazil, as Herbert Klein notes, slaves were "most heavily concentrated in the most dynamic regions of their respective societies on the eve of emancipation."[6]

David Eltis, in his monumental *Economic Growth and the Ending of the Transatlantic Slave Trade*, finds a symbiotic relationship between New World slavery and industrial capitalism. Slave labor produced most of the first luxury goods that reached a mass consumer market, particularly in England, and that therefore contributed to the labor incentives needed for English industrial work discipline. The dramatic drop in price for British manufactured goods reduced the cost of buying slaves on the African coast. While the price of slaves remained low and relatively stable in Africa during much of the nineteenth century, the price of slaves continued to rise in the New World, with minor fluctuations, as landowners sought to meet the mounting world demand for sugar, coffee, cocoa, tobacco, rice, and cotton. As Eltis convincingly argues, "for the Americas as well as for Britain at the outset of industrialization, there was a profound incompatibility between economic self-interest and antislavery policy."[7]

Despite Britain's vigorous and expensive efforts to suppress the Atlantic slave trade, approximately two-and-one-quarter million African slaves were imported into the Americas between 1811 and 1860. As Eltis has shown, it was not until the 1840s, a decade of massive European migration to the Americas, that the flow of free immigrants exceeded the flow of African slaves, even though the importation of slaves was by then almost entirely confined to Cuba and Brazil.[8] The symbiosis between slavery and industrial capitalism is perhaps most vividly indicated by the fact that the illicit Atlantic slave trade depended on British capital, credit, insurance, and the manufactured goods, including firearms, that were exchanged in Africa for slaves.[9]

One concludes from Eltis's iconoclastic study that British capitalism, as a source of human exploitation and suffering in the early industrial era, could have been even worse than it proved to be. Economic growth would probably have increased at a faster rate if Britain had not outlawed the slave trade and curbed the development of the rich plantation lands in Trinidad and Guyana. Consumers and cotton manufacturers would probably have benefited if

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[6] Klein, *African Slavery*, 130, *passim*; Scott, *Slave Emancipation*, chapter 1.

[7] Eltis, *Economic Growth*, 15.

[8] *Ibid.*, 24.

[9] David Eltis, "The British Contribution to the Nineteenth-Century Transatlantic Slave Trade," *Economic History Review*, 2nd ser., XXXII (May, 1979), 211-27.

British cruisers had protected slave ships bound for Texas instead of intercepting slavers in Brazilian waters. There is a subtle irony in the way that Eltis's neoclassical economic analysis exposes the pathological consequences of a world view that subordinates all human relationships to free-market choices and the supreme goal of achieving the largest national product.

But when the vitality and flexibility of nineteenth century slavery are considered, the exclusion of the institution from any territory seems all the more remarkable. Before 1787 the single attempt to exclude slavery from a New World colony proved to be a hopeless failure. In 1790, when Britain sought to encourage white immigration to Canada as well as to the Bahamas and Bermuda, the Imperial Act allowed the introduction of black slaves as a matter of course.[10] Britain failed to respect the French Convention's emancipation decree of 1794, which applied to territories that fell under British control. In 1802 Napoleon restored slavery in Guadeloupe and in the following year legalized both slavery and the slave trade. It is true that when the North American colonies had earlier begun to resist British taxation and to assert their own right to self-determination, they suspended or permanently prohibited the further importation of slaves; but unlike the other plantation societies of the New World, the southern colonies could rely on the rapid natural increase of their slave populations. Although the American Revolution encouraged genuine moral misgivings over the justice of human slavery, the state laws suspending or prohibiting the slave trade arose from a variety of motives. These included the desire of some southerners to maintain high slave prices and to dominate labor markets in the West; the fear of many northerners that slave competition would undermine the livelihood of white workers; and the more widely shared conviction that the Republic's security and welfare required greater racial homogeneity.

Whatever the legacy of the Revolution, in 1787 slavery was supported by the laws of every state except Vermont, New Hampshire, and Massachusetts. Why would representatives from slaveholding states agree without argument to ban the institution from the vast territory north of the Ohio River? It was improbable that the Northwest could ever benefit from the economies of scale associated with gang labor on sugar and cotton plantations, but in 1787 no one could foresee the cotton gin or the rich Black Belt extending across Alabama and Mississippi. As the later history of the Northwest suggests, slaves would have lowered labor costs in various occupations ranging from tobacco and hemp production to mining

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[10] It should be noted that in 1793, under the prodding of Lieutenant-Governor John Graves Simcoe, Upper Canada's legislature passed an act "to prevent the further introduction of slaves," which also provided for gradual emancipation. Robin W. Winks, *The Blacks in Canada: A History* (New Haven, 1971), 96-98.

and construction work. It is well to remember that the Virginia border then extended north to central Ohio, that the lower third of Illinois still extends below northern Kentucky, and that Cairo, Illinois, lies farther south than Richmond, Virginia.

When historians ponder the mystery of Article VI, they customarily quote a revealing passage from William Grayson's letter of August 8, 1787, to James Monroe. Grayson, the Virginian who had presided over Congress when the Ordinance was approved, explained, "The clause respecting slavery was agreed to by the Southern members for the purpose of preventing Tobacco and Indigo from being made on the N.W. side of the Ohio as well for sev'l other political reasons." While we have no reason to doubt the accuracy of this report, aside from a mistake in copying "indigo" instead of "hemp," it is not immediately clear why southerners feared competition more from the Northwest than from the Southwest.[11] In 1787 tobacco exports were rising. If western expansion threatened to lower the price of certain slave-grown staples, it would also raise the price of slaves and offer new opportunities to slaveholders who were willing to migrate. It is true that Grayson and other Virginians had a personal interest in developing the lands of Kentucky and Tennessee and that by 1787 many observers assumed the Northwest would be settled by New Englanders. But the exclusion of slavery would still appear to be a costly surrender of principle, especially for the Deep South.

Representatives from the Deep South, who fought so bitterly to protect their constitutional right to import slaves from Africa, might well have seen Article VI as a restriction that would limit the future demand for slave labor and thus reinforce arguments for a constitutional or congressional prohibition of the slave trade. On July 13 the Constitutional Convention had not yet faced the extremely divisive question of the Atlantic slave trade, and of course no one could predict the outcome of the Constitutional Convention or assume that a new constitution would be adopted.[12] However one interprets the evidence, excluding slavery from such an immense territory appears to be a dangerous precedent and a drastic means either for limiting competition or for the contradictory goal of ensuring that slavery could expand into the southwest. In any event, the latter objective would be virtually guaranteed by the terms of the land cessions of the southern seaboard states.

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[11] William Grayson to James Monroe, August 8, 1787, James Monroe Papers (Manuscripts Division, Library of Congress, Washington, D.C.). I am indebted to Robert F. Berkhofer, Jr., for the information that Grayson orginally wrote "tobacco and hemp" and also that he had extensive landholdings south of the Ohio River.

[12] For an excellent and provocative analysis of the influence of the issue of slavery on the Constitutional Convention, see Paul Finkelman, "Slavery and the Constitutional Convention: Making a Covenant with Death," in *Beyond Confederation: Origins of the Constitution and American National Identity*, ed. Richard Beeman, Stephen Botein, and Edward C. Carter II (Chapel Hill, N.C., 1987), 188-225.

It is possible, of course, that the southern congressmen never expected the prohibition to be effective or permanent. Or Staughton Lynd may well be right when he offers the hypothesis of a secret compromise in which southerners accepted Article VI as a low price for the three-fifths clause and the fugitive slave clause in the federal Constitution.[13] But regardless of the varying views on this question, the intentions of the framers are of minor significance when compared with the ideological consequences of creating free soil.

An instructive analogy can be drawn between Article VI and Lord Mansfield's famed Somerset decision of 1772. Like the Continental congressmen, Lord Mansfield had no intention of endangering the institution of slavery. The question he faced was whether the law of England allowed Charles Stuart, a resident Virginian, to seize his runaway slave, James Somerset, and lock him in chains aboard a ship scheduled to sail to Jamaica. After granting a writ of *habeas corpus*, ordering the ship's captain to bring Somerset to court, Mansfield first sought an out-of-court settlement. Fearing the effects of a judicial opinion on the status of ten thousand or more black slaves held in England, he advised resident planters to appeal to Parliament for appropriate legislation. In an earlier trial Mansfield had announced, "I would have all masters think them free, and all Negroes think they were not, because then they would both behave better." After hearing the opposing arguments of counsel, which would either have legitimated or abolished slavery on English soil, the chief justice searched for the narrowest possible ground on which to base his decision. He affirmed that slavery must be based on positive law and could not be "introduced by courts of justice upon mere reasoning or inferences from any principles, natural or political." In discharging Somerset, Mansfield went no farther than to say English law did not permit a master to seize his servant and forcibly transport him out of the country.[14]

The Somerset decision did not immediately emancipate the slaves living in England or prevent colonists from bringing slaves into the country. Mansfield continued to rule that slaves were not entitled to sue for back wages. Yet the popular press gave wide publicity to the arguments of Somerset's counsel and increasingly interpreted Mansfield's decision to mean that the air of England was too pure for slavery, or in William Blackstone's earlier for-

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[13] Lynd, "Compromise of 1787."

[14] Quotations are from "Pleadings, and a solemn judgement, on the question, Whether a slave continues to be a slave after coming into Britain?" *The Scot's Magazine*, XXXIV (June, 1772), 298-99, and Drescher, *Capitalism and Antislavery*, 37. For discussions of the Somerset case see William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760–1848* (Ithaca, N.Y., 1977), chapter 1; Drescher, *Capitalism and Antislavery*, chapter 2; Davis, *Problem of Slavery in the Age of Revolution*, chapter 10.

mulation, that the moment a slave lands in England, "[he] falls under the protection of the laws, and with regard to all natural rights becomes *eo instanti* a freeman." Slavery lingered in England for some two decades and was not officially abolished until 1834, but masters had no legal remedies when slaves in increasing numbers simply walked away into freedom. Advertisements for runaways virtually disappeared by the late 1780s, when abolitionism acquired a mass appeal.[15]

Like the Northwest Ordinance, the Somerset decision deterred slaveholders from migrating across a boundary loaded with risk. The analogy should not be pressed, since a densely populated industrializing nation over three thousand miles from the nearest plantation economy can hardly be compared with an American frontier. Yet both the edicts became mythologized as antislavery landmarks. Salmon Chase might well have been referring to Somerset when he proclaimed that by a "single act" the Founding Fathers had made slavery illegal and had "impressed upon the soil itself an incapacity to bear up other than freemen." And even the Somerset case was not devoid of racist implications. When Somerset's chief counsel, Sergeant Davy, exclaimed that the air of England was too pure for a slave to breathe in, he was not inviting more slaves to come and breathe the freedom-giving air. He made it clear that the air of England was too pure for a black to breathe in. He wished to prevent an influx of blacks, "for now and then we have some Accidents of Children born of an Odd Colour." Unless a law were passed to prevent such immigration, Sergeant Davy said, "I don't know what our Progeny may be, I mean of what Colour."[16] Racial prejudice was of course far more virulent and widespread in the United States, especially in the Northwest. The determination to avoid the degradation and dishonor of slave labor also involved the exclusion of the race that slavery had degraded.

Although antislavery ideology was closely related to the need to valorize and legitimate free labor, it cannot be reduced to economic self-interest. The popular hostility to slavery that emerged almost simultaneously in England and in parts of the United States drew on traditions of natural law and a revivified sense of the image of God in man.[17] From the time of Granville Sharp and Anthony Benezet, Anglo-American abolitionists were moved by a profound conviction that man-stealing and slaveholding were mor-

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[15] William Blackstone, *Commentaries on the Law of England* (4 vols., Oxford, 1765–1769), I, 123.

[16] The Case of James Sommersertt, a Negro, 20 *How. St. Tr.* 1 at 75; transcript of proceedings in the Court of King's Bench, 1772, pp. 57-60, 65, Granville Sharp Papers (New-York Historical Society, New York City).

[17] This ideology is one of the main themes of Davis, *Problem of Slavery in Western Culture.*

ally wrong. No material rewards could justify the kidnapping and sale of innocent Africans or the reduction of human beings to the status of domesticated animals. When Sharp wrote in 1788 to the Pennsylvania Abolition Society on behalf of the London abolitionists, he stressed that "in addressing the Representatives of a commercial nation on an affair in which its interests and its justice are inseparable, we cannot for a moment abandon the fundamental principle of our association, that no gains, however great, are to be put in competition with the essential rights of man, and that as a nation is exalted by righteousness, so it is equally debased and debilitated by the revenues of injustice."[18]

This very letter also illustrates another aspect of pre-immediatist antislavery thought. Along with his emphasis on uncompromising moral principle, Sharp explained why the London Abolition Society had limited its purpose to eradicting the slave trade. Individual members might look forward to slave emancipation, he said, but this objective could be obtained only by "such gradual and temperate means as the colonial assemblies may adopt." This extreme caution, it appears in retrospect, sprang from the very values that led to the condemnation of slavery. Slavery could not be tolerated as a necessary and permanent evil because it deprived human beings of the responsibilities of free choice and of the recompense for labor, including private property, on which freedom depended. This meant that the ultimate goal of freedom could not be achieved by coercive means that destroyed the very fabric of law, consent, and property.

Even the Quakers, who established the first model of collective emancipation, proceeded gradually and with great caution as they dealt with the symptoms of "slavery withdrawal." Beginning in the late 1750s they investigated the problem of members who were actively engaged in the slave trade; in Philadelphia they adopted disciplinary measures that fell short of disownment. It took some twenty years for the Society of Friends to disengage itself from slaveholding even in the northern states; legal complications prolonged the process in North Carolina.

Four years after the passage of the ambiguous Northwest Ordinance, the French *Amis des noirs* issued a seemingly clear and uncompromising dictum on the status of slaves. Since no man could alienate his natural freedom, the French abolitionists said, "the slave is always free," regardless "of contrary laws, customs, and practices . . . Accordingly, the restoration of a slave's freedom is not a gift or an act of charity. It is rather a compelling duty, an act of

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[18] Granville Sharp to the Pennsylvania Abolition Society, July 30, 1788, Correspondence Incoming, Pennsylvania Abolition Society Papers (Historical Society of Pennsylvania, Philadelphia).

justice, which simply affirms an existing truth—not an ideal which ought to be." But despite this eloquent rhetoric the reformers concluded "that the immediate emancipation of Negro slaves would be a measure not only fatal for our colonies, but a measure which, since our greed has reduced the blacks to a degraded and impotent state, would be equivalent to abandoning and refusing aid to infants in their cradles or to helpless cripples."[19] Such examples add perspective to the emancipation acts of Pennsylvania, Connecticut, and Rhode Island, which preceded the Northwest Ordinance and which applied only to the future-born children of slaves, not to the slaves then living.

Paul Finkelman seems surprised and somewhat outraged by his discovery that "whatever it was supposed to accomplish, Article VI had little immediate impact on the legal status of slaves in the area that would become the states of Indiana and Illinois, where the bulk of the slaves in the territory lived." He suggests that "had there been a full-fledged debate over Article VI a clearer sense of its meaning might have emerged."[20] Apart from the fact that a full-fledged debate would have destroyed, in all probability, any chance of agreement on an antislavery provision, what I find surprising is the absence of any formal exemption of the Franco-American slaveholders from the effects of Article VI. In 1798, when Congress debated a motion to extend the exclusion clause of the Northwest Ordinance to Mississippi Territory, the advocates of slave exclusion acknowledged that the present settlers who had arrived under the laws of England, Spain, or Georgia could not with justice be deprived of their property.[21] The same presumption prevailed in 1804 when Congress considered various proposals for restricting slavery and the slave trade in Louisiana. Yet despite the contradictions between Article VI and a section of the Northwest Ordinance promising that Franco-Americans could retain the laws and customs then in force among them "relative to the descent and conveyance of property," the new federal Congress did nothing to clarify the issue and refused to comply with petitions requesting sanction for even the kind of age-limited servitude found in the gradual emancipation acts of the northern states. Although Congress also failed to veto territorial laws allowing indentured servitude and barring the residence of free blacks, the principle of prohibiting slavery remained intact.

Finkelman is surely right when he points to the discrepancy between the later abolitionist image of the Northwest Ordinance and the continuing vitality of slavery in the region. But one need

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[19] Translated from *Adresse de la Société des Amis des Noirs, à l'assemblée nationale* . . . (2nd. ed., Paris, 1791), 107-108.

[20] Finkelman, "Slavery and the Northwest Ordinance," 360, 359.

[21] *Annals of Congress*, 5 Cong., 2 sess., 1797–1798, pp. 1306-10.

not be as cynical or disillusioned about the Ordinance as he seems to be. For one thing, the unsuccessful struggle to legalize slavery in Illinois must be balanced against the unsuccessful struggle to abolish slavery in Kentucky. Initially led by such evangelical ministers as David Rice, David Barrow, and Carter Tarrant, the latter effort was revived in 1833 by James G. Birney's Kentucky Society for the Gradual Relief of the State from Slavery. Significantly, a large number of antislavery spokesmen from the Upper South eventually found a refuge from mob violence or peer-group hostility in the Northwest. It was not by accident that Edward Coles, the young Virginia antislavery slaveholder who pressed Thomas Jefferson to match his words with actions, later became the governor of Illinois who led the antislavery faction to victory. In 1856 Coles sketched the history of the "marvellous" Ordinance which had preserved freedom in all the states north of the Ohio River. According to Coles, the Ordinance had won more popular sanction than the Constitution as its principles were extended to the territory obtained by the Louisiana Purchase north of the 36°30′ latitude and even to the Oregon Territory before being repealed by the Kansas-Nebraska Act. Needless to say, Coles regarded this repeal as a repudiation of the Founding Fathers' wisest legacy and as a possible prelude to "the awful realities of civil war."[22]

Finkelman voices skepticism about the claims of the aging Coles, who was born seven months before the Northwest Ordinance was enacted. Finkelman presents a brilliant but bleak account of the persistence of slavery in parts of the Old Northwest during sixty-one years of Coles's life. But these statistics must also be put in perspective. In 1820 there were still over 10,000 slaves in New York and more than 7,500 in New Jersey; in Illinois there were only 917; in Indiana 190. Although the Pennsylvania abolition law had been enacted seven years before the Northwest Ordinance, there were more slaves in Pennsylvania in 1820 than in Indiana. Finkelman seems especially disturbed by the fact that slavery lingered in Illinois until the constitution of 1848 finally abolished it. He does not mention that the census of 1840 records only 331 slaves or that in 1840 there were still a few slaves left in Pennsylvania, Connecticut, and Rhode Island. In other words, a lag of sixty years was not unusual in cases of gradual emancipation. In New Jersey, where an emancipation statute won assent only in 1804, slavery survived until 1846, and a few blacks remained in virtual bondage until the Civil War.[23]

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[22] Coles, *History of the Ordinance of 1787*, 21-33.

[23] Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago, 1967), 218-22. My figures on slave and black populations, which must be taken as crude estimates, are based on *Historical Statistics of the United States: Colonial Times to 1970* (Washington, 1975); U.S., Department of Commerce, Bureau of the Census, *Negro Population, 1790–1915* (1918; reprint, New York, 1968); and the table in Eugene H. Berwanger, *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (Urbana, Ill., 1971), 31.

Finkelman might logically reply that the language of Article VI did not imply gradual emancipation. But as he carefully demonstrates, the Northwest Ordinance said nothing about enforcement and failed to clarify the options open to new states. This very ambiguity was probably essential for the initial congressional consensus; it also converted the Ordinance into a charter document, as Andrew R. L. Cayton and Peter S. Onuf have argued, which was subject to conflicting interpretations.[24] The resulting uncertainty had one striking and incontrovertible consequence: it deterred slaveholders from moving across the Ohio River. The Northwest Ordinance, reinforced by flagrantly racist legislation and public opinion, maintained a preserve for whites until there was no possibility that states created from the Northwest Territory would legalize black slavery.

In 1820, for example, there were almost twice as many blacks in Missouri as in Ohio, Indiana, and Illinois combined. Blacks constituted less than 1 percent of the population in each of the three northwestern states, but 30 percent of the population of neighboring Kentucky. Had there been no Article VI, this incredibly lopsided distribution would surely not have prevailed. Parts of Indiana and Illinois, in particular, would have been inundated by the northern edge of the stream of slaves that rolled across Kentucky and Tennessee toward Missouri and Arkansas.

The timing of the Northwest Ordinance contributed to a pattern of boundary making that contained ominous implications for the future of slavery. From England to New England, Pennsylvania, and the Northwest, geographic lines marked off zones where free labor was to be the exclusive norm. If southerners wrongly assumed that even nonslaveholding westerners would prove to be allies, they rightly assumed that New York and New Jersey would soon join the ranks of emancipating states. When they accepted the premise that Congress could define and demarcate free-labor territory, they failed to anticipate the corollary that slavery would increasingly be seen as an exceptional or artificial institution requiring the sanction of positive law. Eventually, of course, after northern politicians moved to exclude slavery from Arkansas Territory, Missouri, and all territories won in the Mexican War, many southern leaders repudiated the principle of free-soil boundaries and demanded what amounted to the nationalization of slavery. The slaveholders won many victories in judicial decisions involving the vexing and complex questions of slave transit, sojourn, and comity, culminating in the Dred Scott decision, but their ideologi-

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[24] Andrew R. L. Cayton and Peter S. Onuf, "The Northwest Ordinance: New Directions in Historical Writing," 4-5 (unpublished paper prepared for a symposium on the Northwest Ordinance, Indiana University, Bloomington, September 6-7, 1987).

cal losses should not be overlooked. The creation and expansion of a free-soil world, however accommodating in certain respects, invited increasingly invidious comparisons between antithetical and seemingly irreconcilable social systems.

Alexis de Tocqueville was only one of the numerous travelers who descended the Ohio River boundary and exclaimed over the contrasting landscapes on the northern and southern shores. After presenting images of industry and sloth, of growth and decay, Tocqueville condensed the message of free-labor ideology in a single memorable sentence:

> On the left bank of the Ohio work is connected with the idea of slavery, but on the right with well-being and progress; on the one side it is degrading, but on the other honorable; on the left bank no white laborers are to be found, for they would be afraid of being like the slaves; for work people must rely on the Negroes; but one will never see a man of leisure on the right bank: the white man's intelligent activity is used for work of every sort.[25]

This dramatic polarity, however deceptive in terms of wealth and economic growth, was a legacy of the Northwest Ordinance. It provided the core of the Republican party's ideology, an ideology that seemed convincing to millions of northerners who had no sympathy for the abolitionist cause. At the end of the Civil War, Charles Sumner contended that the Confederate states had neither seceded nor become conquered provinces. Having forfeited their rights by an act of rebellion, he claimed, they had in effect reverted to the status of territories temporarily subject to congressional control. Since the Constitution provided no guidelines for Reconstruction, Sumner turned instinctively to the precedent of new beginnings, the precedent that had supposedly made the Old Northwest a model republican society.

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[25] Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer, trans. George Lawrence (Garden City, N.Y., 1969), 345-46.