

Northern Black Codes: Were They Effective?

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**PRELIMINARY DRAFT. NOT THAT YOU'D WANT TO AT THIS POINT, BUT
PLEASE DON'T CITE. CITATIONS AND REFERENCES FORTHCOMING.**

Abstract

Very little has been written about laws in northern states that restricted the rights and mobility of blacks during the ante- and postbellum eras. While the existence of these codes is indicative of the racial attitudes of the northern population, I hypothesize that these codes were characterized by high costs of enforcement that may have limited their effectiveness. By examining the costs of enforcing Black Codes in Indiana, Illinois, and Ohio, I hope to show that these codes had differing degrees of success as a result of varying enforcement costs.

Before the Civil War, many free states enacted statutes similar to this provision in the Oregon Constitution:

No free Negro, or mulatto, not residing in this state at the time of adoption of this constitution, shall ever come, reside, or be within this state, or hold any real estate, or make any contract, or maintain any suit therein; and the legislative assembly shall provide by penal laws for the removal by public officers of all such free negroes who shall bring them into the state, or employ or harbor them therein.

Surprisingly, very little has been written¹ about these laws (or “Black Codes”), their evolution, and their impact on ante- and postbellum America. Of particular interest are the legal restrictions on black mobility in Illinois, Indiana, and Ohio. These three states are attractive subjects of study for several reasons. First, the conditions under which each entered the union were stipulated in the Northwest Ordinances. Second, their “corn belt” populations were similar in size and composition. Third, each shares a border with Kentucky, a slave state. Finally, each enacted different Black Codes, to be discussed below. I plan to examine the costs associated with enforcing these statutes and determine whether or not they were, in fact, successful.

I currently have yet to gather data, perform any tests, or find the precise wording of each statute. What follows is a brief discussion of the codes in Illinois, Indiana, and Ohio, why they make interesting subjects of study, and my preliminary hypotheses regarding the Codes’ effectiveness.

Illinois

For the better part of Illinois’ antebellum history, free blacks were only allowed to enter the state after posting a \$1000 bond. In 1848, Illinois changed its constitution to

¹ In the economics, political science, history, African-American Studies, or sociology literature (according to a JSTOR search). I have yet to check the law journals.

absolutely prohibit the entrance of free blacks. In 1853, Illinois enacted legislation to enforce the ban.

Illinois shares borders with two slave states (Kentucky and Missouri), one of which is quite long. This might result in high costs of enforcement. However, both borders are “wet” in that anyone wishing to cross from Kentucky into Illinois must cross the Ohio River and anyone wishing to cross from Missouri into Illinois must cross the Mississippi River. This might mitigate the high enforcement costs associated with patrolling two borders. To determine Illinois’ commitment to the ban, it would be instructive to consider what kinds of resources were devoted to enforcement, where enforcement occurred, and the penalties Illinois exacted upon those who violated the ban.

It is also interesting to note that the Code was presumably on the books in 1857 at the time of the *Dred Scott* decision. According to the facts of the case, Scott, a Missouri slave, had been in Illinois for four years when he sued for his freedom. The court’s classification of a slave as a “thing” and not a “person” presumably aroused fears that slavery would spread to the free states and was one factor among many that led to the Civil War. According to Illinois law, however, Scott had no business being “a free man” in Illinois.

Indiana

Indiana’s Constitution barred free blacks from owning property or entering contracts with wording almost identical to that contained in the quote from the Oregon Constitution discussed above.

I expect that Indiana’s Codes were enforced successfully because of low enforcement costs. Contracts could be voided at little cost, and the race of the parties in

question was observable and easily measured. Moreover, Indiana only bordered one slave state (Kentucky), and said border was “wet.” As such, enforcement against in-migrants could be concentrated on a small area.

Ohio

Ohio law (I’m not sure if this was a constitutional provision at this point) called for the expulsion of all free negroes.

I hypothesize that the costs associated with herding and expelling a state’s entire black population were prohibitively high (and increasing with distance from border states). Furthermore, Ohio shared long borders with two slave states (Kentucky and Virginia), only one of which was “wet.” I expect to see some success in Ohio’s southern counties (near Cincinnati in particular), but I would expect that enforcement of this Code was largely unsuccessful.

Of course, some of these costs might be mitigated by Ohio’s proximity to Pennsylvania, which, to the best of my knowledge, had no such codes and even welcomed free blacks. Whether or not this was the case remains to be seen.

Taking it to the Data

I hope to regress a proxy for “migration into border counties” on proxies for enforcement costs and availability of information.² Constructing a migration proxy might be difficult; I hope to see whether or not I can find data from censuses, county records, or other sources can shed light on this issue.

Enforcement costs should be straightforward: length of “slave borders,” a dummy for whether or not said border was wet or dry, and enforcement budgets should suffice.

² One hypothesis is that free blacks didn’t migrate north because they didn’t know they could.

The “availability of information” data may be harder to come across, but I suggest that black literacy rates, distance from free state borders, and availability of newspapers might shed light on this.