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The Proving Ground:
The Decline of Slavery and the Emergence of Black Codes in Antebellum Delaware

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Introduction: Delaware as Proving Ground

President Lincoln thought that he had a great idea—a great idea that involved Delaware. Shots had been fired at Fort Sumter seven months earlier, and Lincoln was hard at work trying to figure out the quickest way to end this insurrection and start repairing a deeply divided but unquestionably intact Union. To convince everyone to move past this rebellion, Lincoln believed that he needed to propose and successfully demonstrate an economically viable model for eliminating slavery. Historian Allen C. Guezlo sums up Lincoln’s thought process: if the president could find a way to get rid of slavery without eating into slaveholders’ profits, then “the rebels would see the handwriting on the wall, the Union would be restored, and slavery would be on the short road to extinction.”¹

A brief note on terminology: I would like to take this opportunity to offer a disclaimer in line with a note in legal and cultural historian Martha S. Jones’ book *Birthright Citizens: A History of Race and Rights in Antebellum America*. Jones explains that she uses the “black” and “African American” interchangeably, though she recognizes the distinctions between the terms—the former is “a broader term that would also encompass African-descended people from Africa, the Caribbean, and South America” (164). I have followed this convention. Moreover, I, like Dr. Jones, do not intend to use either term in an effort to demean or insult any group of people, and I understand that race is a social construct and not a fundamental difference, biological or otherwise (164). Also, when I use the term “free black” in this paper, I use it only as a term of distinction from literal chattel enslavement. I recognize that African Americans who were nominally free were still often denied many of the rights associated with freedom (for instance, the right to vote). Finally, I have followed the *Chicago Manual of Style*’s recommendation that “African American” be spelled without a hyphen (8.39), unless I am quoting directly from an author who uses the hyphen.

And Lincoln thought he had the mechanism to do just that. He could compensate slaveholders for each of their slaves, using federal money to effectively buy slaves' freedom. Though modern-day analyses from historians, economists, and journalists—such as Ta-Nehisi Coates' discerning polemic on this very issue²—outline the economic and social impossibility of compensated emancipation at the time of the Civil War, Lincoln was convinced that he could make it work. He just needed a place to try it.

In 1861, Lincoln's options for testing out his compensated emancipation plan were limited to the four slave states that had not seceded (Delaware, Maryland, Kentucky, and Missouri) or the District of Columbia.³ Of these, he felt that Delaware stood the best chance of passing a compensated emancipation act, based on the simple fact that it had the least slaves within its borders. In a letter to Senator James A. McDougall on March 14, 1862, Lincoln explained that the 1860 Census counted 1798 slaves in Delaware, so “less than one half-day's cost of this war would pay for all the slaves in Delaware at four hundred dollars per head.”⁴ He calculated that emancipating all 432,622 slaves in the four states plus D.C. would add up to the cost of eighty-seven days of the war. “Do you doubt,” he asked McDougall, “that taking the initiatory steps on the part of those states and this District would shorten the war more than eighty-seven days, and thus be an actual saving of expense?”⁵ To Lincoln, the plan was an obvious, smart choice, and it would all work if he could prove its efficacy in Delaware. Thus, the tiny border state, an overlooked patch of land not quite 2000 square miles in size, became the

¹ Guelzo, Allen C. *Lincoln's Emancipation Proclamation: The End of Slavery in America* (New York: Simon & Schuster, 2004), 65.

² Ta-Nehisi Coates, “No, Lincoln Could Not Have ‘Bought the Slaves,’” *The Atlantic*, June 20, 2013, <https://www.theatlantic.com/national/archive/2013/06/no-lincoln-could-not-have-bought-the-slaves/277073/>.

³ Abraham Lincoln, Abraham Lincoln to James A. McDougall, Friday, March 14, 1862, manuscript/mixed material, in *Abraham Lincoln Papers: Series I. General Correspondence. 1833 to 1916, 1862*. <https://www.loc.gov/item/mal1502100/>.

⁴ Lincoln to McDougall.

⁵ Lincoln to McDougall.

key to Lincoln's entire endeavor. Delaware was the proving ground, the litmus test. If Lincoln could point to a tangible triumph in Delaware, he could convince Maryland, Kentucky, Missouri, and D.C. to sign on; if he could convince Maryland, Kentucky, Missouri, and D.C. to sign on, he could stop the war in its tracks.

But alas, Lincoln's plan did not succeed in Delaware, where it was championed by Congressman George Fisher. It was predicted to fail by a single intractable vote in the state assembly's House, and the proposal was duly withdrawn.⁶ Subsequent bids for compensated emancipation in the other states were likewise rejected, and Lincoln gained only a small consolation prize when he signed the District of Columbia Compensated Emancipation Act in April 1862. The president moved on and looked into a way to tackle the slavery issue from another angle, announcing the Emancipation Proclamation the next year, and his efforts for compensated emancipation have been largely overshadowed in history by his more famous executive order of 1863. But Lincoln got something right about his compensated emancipation plan: Delaware *was* a proving ground. And as a proving ground, Delaware has done more than simply signal that the border states were not going to go for compensated emancipation.

In this paper, I will explore the question of slavery in Delaware, a place where the peculiar institution died not with the bang of the Thirteenth Amendment, but instead with a quiet whimper through the antebellum years. I will draw especially upon the excellent (but relatively sparsely-cited) research of historians William H. Williams and Patience Essah, whose monographs on slavery in Delaware were both published in 1996, but my study has also been informed by various other secondary materials and a particularly incisive letter penned in 1837. I intend to offer a synoptic but insightful look into the factors that led to the curious decline of

⁶ William H. Williams, *Slavery and Freedom in Delaware, 1639–1865* (Wilmington, DE: Scholarly Resources, 1996), 175.

slavery in the border state of Delaware before the Civil War, as well as the black codes that entered in its place. And ultimately, I hope that my paper can point to the broader idea that Delaware in the first half of the nineteenth century was a proving ground for the treatment of African Americans in the wake of slavery, and that it was in Delaware, the First State, where the ideology of the postwar Deep South underwent its initial tests—which, unlike Lincoln’s plan for compensated emancipation, were unfortunately quite successful.

A Changing Economy: The Decline of Slavery in Delaware

To examine the racial circumstances and tensions in antebellum Delaware, it is first necessary to understand the driving forces behind slavery’s decline in the state. Throughout the seventeenth century, Swedish, Dutch, and English settlements had sprouted up in Delaware, with each nation jostling for prime position in a territory that relied upon a staple-crop economy.⁷ In October of 1664, though, an armed band of Englishmen ousted the Dutch by force, and the colony came definitively into English hands.⁸ While slavery—which had been introduced to Delaware by the Dutch earlier in the century⁹—played a minimal role during the first decade of English rule, by the 1680s the influence of the Chesapeake Bay’s lucrative tobacco market had completely infiltrated the colony.¹⁰ Delaware farmers, who had previously focused on growing wheat, slowly but surely looked to emulate the success of their counterparts in Maryland and Virginia. This shift happened to coincide with a period of prosperity in late seventeenth-century

⁷ Patience Essah, *A House Divided: Slavery and Emancipation in Delaware, 1638–1865* (Charlottesville, VA: University Press of Virginia, 1996), 15–7.

⁸ Essah, 18. The Dutch briefly retook Delaware between 1673–4 but were unsuccessful in their attempt to regain long-term control.

⁹ Williams, *Slavery and Freedom*, 6.

¹⁰ Essah, *House Divided*, 29.

England, which in turn led to a decrease in young Englishmen crossing the Atlantic as indentured servants hoping to eventually build themselves a better life in America.¹¹ Thus, from the outset, Delawareans turned almost exclusively to slave labor to work their fledgling tobacco farms.

However, there was a uniquely Delawarean problem that surfaced during this tobacco boom: size. Patience Essah points out the limitations of the Chesapeake tobacco system as applied to Delaware, explaining that “the diminutive size of Delaware and the absence of an internal and external frontier” both “prevented the development of large-scale tobacco plantations” in the state and “denied Delaware tobacco farmers the room to escape from tobacco-related ills.”¹² Delaware simply did not have enough physical space to accommodate massive tobacco operations or to provide an extensive enough array of crops to fall back on during periodic downturns in a tobacco market that experienced year-to-year volatility. The economic model of the tobacco market proved unsustainable in a space as confined as Delaware, where farmers could not keep up with the increasingly elaborate enterprises of the other Chesapeake Bay colonies.

While Delawareans enjoyed economic prosperity from their tobacco farms well into the first half of the eighteenth century, by the time of the Revolution it became clear that Delaware as a whole could not continue to compete with the major tobacco colonies. The woes of Delaware’s sputtering tobacco production were exacerbated by the reputation of the Delaware Valley crop as inferior to Maryland or Virginia tobacco—and by the lower price point associated with this reputation.¹³ These difficulties, coupled with the nearby port of Philadelphia’s position as a prominent place of grain exportation, led Delaware farmers to direct their efforts away from

¹¹ Essah, 30.

¹² Essah, 29.

¹³ Stevenson W. Fletcher, *Pennsylvania Agriculture and Country Life, 1640–1840* (Harrisburg: Pennsylvania Historical and Museum Commission, 1950), 165.

tobacco and back to the wheat (and, to a lesser extent, corn) that they had grown a century ago.¹⁴ Indeed, by 1788 there was not a single recorded commercial tobacco plantation operating in the state,¹⁵ but the production of wheat and corn was soaring.

But in addition to steering the state away from direct competition with the tobacco powerhouses of the Chesapeake Bay, this shift to wheat and corn cut down on the manpower necessary to sustain a profitable farm. William H. Williams explains that tobacco “demanded almost daily attention” from early spring to late fall, because each individual plant needed to be “set in by hand in each hill [of pulverized soil], watered, and then watched closely.”¹⁶ Conversely, wheat, once planted, could essentially be left alone until it was fully grown; corn, while a degree less straightforward than wheat, was still not nearly as labor-intensive as tobacco.¹⁷ Once Delaware farmers turned to wheat and corn, they realized that it was economically advantageous to seek hired help for the few busy weeks of the growing season, as opposed to making a year-round, long-term investment in a group of slaves who would be working at full capacity for only a fraction of each year.¹⁸ In this way, slaves in Delaware became in many cases an economic burden rather than a benefit, so—for reasons that had everything to do to the bottom line and nothing to do with morality—Delaware slaveholders reconsidered their holdings. The rate of manumissions (which had occurred with some regularity in Delaware since the 1740s, when the colony’s smallest farmers began to be squeezed out of the tobacco business) increased dramatically: while seventy percent of Delaware’s African

¹⁴ Williams, *Slavery and Freedom*, 45.

¹⁵ Williams, 45.

¹⁶ Williams, 44.

¹⁷ Williams, 45.

¹⁸ Williams, 45–6.

Americans were enslaved in 1790, the state's black population was seventy-four percent *free* by 1810.¹⁹

Voluntary Emancipation: Delaware's Motivations

But why did voluntary emancipation take hold in Delaware? After all, Delaware's move away from slave labor was motivated by economic factors, and yet manumission was not the most profitable way of offloading what was to slaveowners legal property. Indeed, when Virginia (a state which actually transitioned away from tobacco and to wheat not long after Delaware, but for different reasons²⁰) found itself with a surplus of slaves and a dearth of farm labor to be done, slaveowners capitalized by forcibly breeding their slaves and selling them to the Deep South through the brutal and lucrative domestic slave trade.²¹ What led Delawareans, keen as they usually were to take a page from their successful Virginian counterparts, to overwhelmingly decide to manumit rather than to sell their slaves?

The answer can be found in a number of moral factors stemming from the influence of abolitionist groups and religious factions in the post-Revolution years. The proximity of Delaware to Pennsylvania provided (in addition to the grain port of Philadelphia that had helped move Delaware away from a tobacco-based economy in the first place) a model for abolitionist thought in the wake of the Revolution. Especially in New Castle and Kent Counties, the northern

¹⁹ Essah, *House Divided*, 36.

²⁰ T. H. Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton: Princeton University Press, 1985), 181. Breen notes that great farmers in Virginia were frustrated with the volatility of the tobacco market and often found themselves in debt due to poor speculation and, eventually, British import duties (178–9). Wheat had become a “second staple” of Virginia by the 1770s (181), and tobacco production in the state was very limited beyond the end of the eighteenth century.

²¹ Maurie D. McInnis et al., “To Be Sold: Virginia and the American Slave Trade,” Library of Virginia, 2014, <http://www.virginiamemory.com/online-exhibitions/exhibits/show/to-be-sold/introduction>.

two of Delaware's three counties and thus those in closest contact with Philadelphia, citizens looked to emulate the beliefs of Northern cosmopolites. Indeed, between 1788 and 1800, no fewer than four abolition societies, some more successful than others, were founded in Delaware; three of these (the only three to have left written records of their proceedings) were headquartered in either New Castle or Kent County, largely based out of the cities of Wilmington (New Castle) and Dover (Kent).²² The first society, in Dover, was modeled specifically on the structure of the Pennsylvania Abolition Society, and it sent a delegation to a conference on abolition in Philadelphia in 1795.²³

The emergence of these abolition societies in Delaware was due not only to the national discussion of liberty and freedom in the wake of the American Revolution, but also to the religious makeup of the state itself. Delaware, in fact, was part of Charles II's original 1682 land grant to William Penn,²⁴ which ensured strong Quaker roots in the colony (and then state) and a good relationship with the Quakers of Pennsylvania. Though at first the Quakers held an attitude toward the morality of slavery that was complex and (says Williams) ultimately "ambiguous,"²⁵ they became increasingly ardent abolitionists and, in the years following the Revolution, were flocking to abolitionist societies *en masse*. Therefore, the abolitionists in New Castle and Kent were led and organized by the counties' sizeable Quaker population.²⁶

²² Essah, *House Divided*, 59–60.

²³ Essah, 60. According to Essah, this society "disbanded shortly thereafter, probably for financial reasons," but in its short lifespan, it petitioned the state legislature for various abolitionist measures and provided a template for future abolitionist groups in Delaware.

²⁴ Essah, 18.

²⁵ Williams, *Slavery and Freedom*, 18.

²⁶ Essah, *House Divided*, 44. The quieter but not nonexistent antislavery sentiment in Delaware's southernmost county of Essex—where there was a single, albeit not well-documented, abolitionist society—was due less to the Quakers, whose numbers in Essex were smaller than in New Castle or Kent, than to the Methodists. The Methodists disavowed the institution of slavery for a brief historical moment, but by the first decades of the 1800s the sect was "reversing itself on the slavery issue" (56).

Through these abolitionist agitators, Delaware was able to enact and defend meaningful legislation that not only paved the way for the dramatic uptick in manumissions but also allowed free African Americans to establish their own communities within the state. The Quakers won their first major victory in February 1787, when—following a 1786 Quaker petition—the Delaware state legislature passed an overtly pro-manumission law that severely restricted the sale of slaves out-of-state in addition to banning the importation of slaves into Delaware.²⁷ Upon further pressure and petitions by Quakers and other Delaware abolitionists, a string of increasingly strong pro-manumission laws followed; individual acts were passed in 1789, in 1793, and in 1797.

Not only did these acts encourage manumission, but by increasing the population of free African Americans in the state, they indirectly afforded African Americans greater agency in Delaware courts. According to Essah, judges in Delaware began to reject the heuristic “policy of classifying all blacks as slaves” until proven otherwise, and by the mid-1800s more and more courts in the state were “put[ting] the burden of proof on those who claimed to be owners.”²⁸ This judicial interpretation was expressed clearly and succinctly in the 1840 Delaware Court of Errors and Appeals case *State v. William Dillahunt*.²⁹ In this case, a pertinent side issue emerged when the legitimacy of the testimony of a black woman named Charlotte Green³⁰ was called into question because she could not be definitively proven to be free. The court admitted her testimony, stating that even in the *de jure* slave state of Delaware, “a large majority of all persons of color . . . are free,” so “there is no reason to presume slavery from color.”³¹ In this

²⁷ Essah, 40.

²⁸ Essah, 67.

²⁹ The primary focus of the case was not on race: *The State v. William Dillahunt* was a murder case decided on the distinction between mere drunkenness and *mania a potu*.

³⁰ There was no debate about whether race alone would exclude Green from testifying, as a black man was on trial.

³¹ *State v. William Dillahunt*, 3 Del. 551 (Del. 1840).

way, with the courts on their side (and, not insignificantly, with the interstate slave trade explicitly banned), free blacks in Delaware did not need to live with the constant specter of enslavement or re-enslavement looming over them.

Consequently, free African Americans in Delaware were able to build communities somewhat reminiscent of those in major Northern cities.³² Williams writes of Wilmington's "sizeable free African-American population that comprised an almost autonomous community unto itself" by the midpoint of the nineteenth century.³³ Much of the African American community in Wilmington centered on religious life; free blacks were successful in establishing their own churches, the most enduring of which being the African Union Methodist Church (or the "Old Union"), founded in 1813.³⁴ Then, beginning the very next year, African Americans in Wilmington began celebrating the Big August Quarterly (or the "Big Quarterly"), a religious and social gathering of free blacks spearheaded by the freed slave-turned-Old Union leader Peter Spencer.³⁵ This celebration grew from its rather modest origins as a small religious service to become a week-long, reunion-style gathering of African Americans from not just Delaware but also Pennsylvania and New Jersey, where friends and extended families could catch up and enjoy each other's company. A highlight for the African American people of Wilmington and beyond, the celebration outlasted the lifespan of its inventor; while Spencer died in 1843, the Big Quarterly continued to be held annually up through the Civil War years and beyond.³⁶ Overall, though Wilmington's black community was never as robust or ingrained as those of Northern

³² Nevertheless, even as Delaware's free blacks built a community for themselves in Wilmington, many newly-manumitted African Americans elected to move out-of-state, especially to Philadelphia—a much larger city with more job opportunities and black institutions (Essah, *House Divided*, 112).

³³ Williams, *Slavery and Freedom*, 234.

³⁴ Essah, *House Divided*, 149.

³⁵ Williams, *Slavery and Freedom*, 228.

³⁶ Williams, 228–9. In fact, a version of the Big Quarterly is still being held to this day: <http://augustquarterly.org>.

urban centers like Philadelphia, free African Americans of Delaware were able to create their own institutions and traditions in their state's largest city.

Opposition to Abolition: Slavery Stays Legal

Of course, though, a piece of this narrative is still missing. Delaware encouraged manumission, protected free blacks from enslavement, and to some extent provided a social space for black communities—so why didn't the state just go ahead and abolish slavery entirely? While Quakers and other progressives lobbied for abolition—the petitions they sent throughout the 1780s and '90s all included calls for abolition, all of which were ignored³⁷—the influence they exerted in New Castle County and the northern half of Kent County by no means extended to the southernmost Essex County. Serving as Delaware's gateway to the South and its ideology, Essex County aligned itself squarely with the protection of the institution of slavery. Though by 1840 Delaware's slave population—disproportionately located in Essex County—had dipped below three thousand (or just roughly fifteen percent of the state's entire African American population) and provided little net economic benefit,³⁸ the whites of Essex County vehemently opposed statewide abolition, even as many of them manumitted their own slaves. In Essex County, at the “frontier” of Delaware and far removed from Northern urban networks and extensive governmental oversight, many slaveholders continued to export their slaves to the Deep South.³⁹ Though this lucrative practice had repeatedly been deemed illegal by Delaware's pro-manumission acts, in reality statewide enforcement of these laws was weak, and the second-

³⁷ Essah, 155–6.

³⁸ Essah, 7.

³⁹ Essah, 83.

rate slaveocracy of Essex County was usually more than willing to turn a blind eye to any illicit sales.⁴⁰

But even setting aside the profits Essex County slaveholders made by unlawfully selling their slaves (or by kidnapping free blacks), Southern Delawareans supported the institution of slavery for ideological reasons. Just as cities like Wilmington looked to emulate the Northern metropolis of Philadelphia, so too did the rural areas of Essex County look toward the South for inspiration. Because they had historical ties to the tobacco industry and the Chesapeake Bay economy, the people of Essex County largely saw themselves as Southerners. They were willing to put aside any economic concerns—to practice, as Essah says, “economic backwardness⁴¹—in order to focus instead on their affinity with their Southern kinsmen and their shared brand of flagrant white supremacy and the disavowal of blacks’ claims to the most basic and fundamental human rights.

With a considerable pro-slavery voting population, Essex County (with support from the southern localities of Kent County) was able to create a prolonged stalemate in the Delaware state assembly. With the Northern and Southern Delawareans at continual loggerheads, no political party was able to gain a stable majority in the state legislature in the antebellum years,⁴² and the divided border state of Delaware could get nowhere beyond the compromise of encouraged but noncompulsory manumission on an individual basis. Moreover, even the members of New Castle and Kent Counties who did campaign for statewide emancipation often did so out of expediency more than altruism. They realized that showing the slightest interest in

⁴⁰ This unlawful avenue led also to the rise in kidnapping and sale of free blacks, most notoriously by a quasi-legendary figure named Patty Cannon, who shuttled between Essex County and Maryland and ran a “reverse Underground Railroad” operation for a decade until she died in custody in 1829. For a deeper discussion of Patty Cannon and her kidnapping ring’s activities, see Richard Bell, “‘Thence to Patty Cannon’s’: Gender, Family, and the Reverse Underground Railroad,” <https://www.tandfonline.com/doi/pdf/10.1080/0144039X.2016.1163136>.

⁴¹ Essah, *House Divided*, 83.

⁴² Essah, 3–4.

the freedom of Delaware African Americans would garner a consistent and loyal bloc of black voters if abolition and suffrage (free African Americans in Delaware, treated as second-class citizens, did not have the right to vote⁴³) took hold.⁴⁴ Thus, many if not most of whites in Northern Delaware, even if they supported abolition, still harbored vehemently racist and white supremacist beliefs.

Adding fuel to the fire in a city like Wilmington was the fear and animosity with which whites looked on as blacks built burgeoning communities for themselves—feelings which must have peaked every August when droves of in-state and out-of-state African Americans descended upon the city for the Big Quarterly. Wilmington’s local government, controlled by whites, thus oftentimes acted against the interests of African Americans. For example, after free blacks in Wilmington founded the African Benevolent Association (a charitable group aimed at fostering virtue and molding upstanding citizens within the African American community) in 1820, the city of Wilmington twice denied the organization a charter of incorporation—without providing a reason for their decision.⁴⁵

In all, with a growing population of free blacks, a deadlocked state legislature, and an intensely racist climate produced by overtly pro-slavery Southern Delawareans as well as subtler Northern Delawareans, by the mid-1800s the state of Delaware had produced a sociopolitical climate hospitable to the emergence of black codes.

The Black Codes: A New Avenue of Discrimination

⁴³ Harold B. Hancock, “Not Quite Men: The Free Negroes in Delaware in the 1830’s [sic],” *Civil War History* 17, no. 4 (December 1971): 323, <http://muse.jhu.edu/article/419025/pdf>. Free blacks in Delaware would not even gain nominal voting rights until the passage of the Fifteenth Amendment (which Delaware, in fact, did not ratify until 1901).

⁴⁴ Essah, 4.

⁴⁵ Essah, 145.

Delaware's reality, of a dwindling institution of slavery but a persistent strand of virulent racism, was the crucible in which the Delaware black codes were forged. This series of laws to institutionally marginalize and repress African Americans began via decentralized legislation throughout the early 1800s, taking hold as a form of race-based social control as more blacks were manumitted. An 1826 law, for example, "mandated that free blacks carry passes" attesting to their freedom⁴⁶—even in New Castle County, where slavery was virtually nonexistent. Essah argues that the very act of forcing African Americans to carry this pass "defined free blacks as an 'other,' a class inherently unequal to whites."⁴⁷ The otherization of African Americans existed as a symbolic alternative to slavery, a channel for discrimination in an age in which the institution of slavery was unpopular.

Restrictive racial legislation in Delaware gained its greatest force and traction in the wake of Nat Turner's insurrection in Virginia in August 1831, which sparked widespread paranoia amongst whites (even those who did not own slaves).⁴⁸ In October, there were whispers in Seaford, Sussex County, of a potential slave uprising—which turned out to be a group of white men in blackface playing a racist trick on the town.⁴⁹ This hoax, in the fear it provoked in whites who believed the rumors, reified statewide paranoia about a black revolt, and in 1832 the state assembly passed its first full-force black code. This code included laws requiring African Americans to obtain a (nearly impossible to acquire) license before purchasing a firearm, setting

⁴⁶ Essah, 110.

⁴⁷ Essah, 111.

⁴⁸ James E. Newton, "Black Americans in Delaware: An Overview," in *A History of African Americans of Delaware and Maryland's Eastern Shore*, ed. Carole Marks (Wilmington: Delaware Heritage Press, 1996), <http://www1.udel.edu/BlackHistory/overview.html>.

⁴⁹ Essah, *House Divided*, 118.

a curfew, and limiting the number of blacks that could gather together at night.⁵⁰ Petitions from the black community against these laws consistently fell upon deaf ears.

These most complete primary-source observation of Delaware’s black codes in action belongs to a member of the American Anti-Slavery Society named William Yates. Yates, a white man⁵¹ who would go on to pen a somewhat-influential legal treatise entitled *The Rights of Colored Men* in 1838,⁵² took a research trip to Delaware in 1837, six years after Nat Turner’s rebellion and well into the heyday of Delaware’s black codes. In a July 1837 letter, Yates explained that he had ventured down to the border state from his hometown of Troy, New York, to Delaware in order “to learn from personal observation the condition of the free people of color” in Delaware⁵³ The letter itself was the fruit of this research trip, for after he wrote it on July 18, he published it in two New York newspapers: *The Emancipator* on August 5, and *The Colored American* on August 12. It is clear from his initial statement of purpose—to observe “the condition of the free people of color” in the state—that Yates in 1837 could already see that Delaware was a unique case, a state with a relationship toward slavery and freedom more muddled and complex than in the North or the South.

Yates wrote that he “had hoped to find slavery in Delaware merely *nominal*,” but that in reality “the so called free people of color are only *nominally* free.”⁵⁴ Disheartened by this realization, Yates attempted to figure out the mechanisms Delawareans have put in place to

⁵⁰ Essah, 119.

⁵¹ Historian Harold B. Hancock, who edited and republished Yates’ letter in 1973, refers to Yates as black. However, in the introduction to *Birtright Citizens*, Martha S. Jones explains how through her own research she determined that this Yates was white. Confusion stems from the fact that at the same time lived another William Yates, a freed slave, who worked as a porter in the U.S. Supreme Court before becoming a leading journalist and political activist in San Francisco. See Jones, *Birtright Citizens*, 1–9, for this fascinating story of the two William Yateses.

⁵² Jones, *Birtright Citizens*, 3.

⁵³ William Yates, “Slavery, and Colored People in Delaware,” 1837, in “William Yates’s Letter of 1837: ‘Slavery, and Colored People in Delaware,’” ed. Harold B. Hancock, *Delaware History* 14 (Spring 1971): 206.

⁵⁴ Yates, 208.

prevent African Americans from enjoying anything more than “a mongrel liberty, a mere mock freedom.”⁵⁵ What he found was a system of selectively-enforced laws whose “general scope and design seem . . . to have been to degrade, to crush, and to render [blacks] ignorant and powerless.”⁵⁶ In this way, not only had the Delaware legislature dismissed calls for statewide abolition, but it had also approved a framework for discriminatory practices that stopped short of slavery itself. Yates described that some of these practices, including (as discussed previously) turning a blind eye to the illicit kidnapping and selling activities that were occurring (although it is still debatable to what exact extent) in Southern Delaware. He also recorded instances of laws that explicitly target blacks; he noted that African Americans who came to Delaware from other states and stay for longer than ten days were “liable to imprisonment and sale in case of the non-payment of the [\$10 per week] fine.”⁵⁷ This law, though passed three years before the inaugural Big Quarterly of 1814, would come to serve as a likely deterrent for many out-of-state African Americans deciding whether to make the trip to Delaware each August.

But the most systemic and insidious issue, Yates perceptively pointed out, arose from the unequal enforcement of laws that on face value are somewhere in the realm of neutral. Yates wrote that the legal punishment in Delaware “for larceny and receiving stolen goods” was “*sale as a servant*”—whether the convicted is white or black.⁵⁸ However, Yates indicated that for whites, “public opinion neutralizes the law, as the sale of a white man is merely nominal,” with a small fine serving as sufficient restitution.⁵⁹ On the other hand, the risk of sale “of a colored man is real (i.e.) for consideration, and is often taken advantage of as a door to smuggle him off into

⁵⁵ Yates, 208.

⁵⁶ Yates, 209.

⁵⁷ Yates, 211.

⁵⁸ Yates, 211.

⁵⁹ Yates, 211.

perpetual bondage.”⁶⁰ Yates revealed, then, how a law which was neutral in its letter could become weaponized against African Americans in its implementation. Thus, the specious appearance of legal equality⁶¹ allowed for highly discriminatory practices—the heart of the black codes—to occur in actuality. And so, though slavery had fallen out of widespread practice in Delaware, its tenets of racial oppression gained new life through the black codes.

Conclusion: The Legacy of What Yates Saw

In the final paragraphs of his letter, Yates expressed in no uncertain terms the dire stakes of the sociopolitical climate in Delaware: “Delaware is a most critical ground in the contest now waging between liberty and slavery, between light and darkness.”⁶² Delaware, thought Yates, had the capacity to change its policies for the better and guide states to its south into the light, but it was also at risk of staying the course and keeping the South enshrouded in darkness. In fact, Yates’ analysis might have been more prescient than even he knew: the First State was such a “critical ground” because it was—as Lincoln would notice for different reasons twenty-five years later—a *proving ground*. Delaware, where slavery had essentially died out due to internal factors, would set the example for how a slavery-friendly state could respond to the end of the peculiar institution.

Regrettably, Delaware did not take the advice of Yates, who entreated the state to “substitute kindness, liberality and encouragement, in the place of oppression, contempt and

⁶⁰ Yates, 212.

⁶¹ Although, in 1839, state assembly dispensed with the pretense of neutrality and officially expressed that whites convicted of stealing, unlike blacks, could not be sold into servitude (Williams, *Slavery and Freedom*, 193).

⁶² Yates, “Slavery,” 215.

exclusion.”⁶³ Instead, it continued to champion the ideology of the black codes, whereby nominally free African Americans were targeted by overtly and covertly racist laws intended to sustain the “oppression, contempt and exclusion” of blacks. And in proving resoundingly—and by as early as the 1830s—that blacks could be systematically kept down by means other than the longstanding framework of traditionally-understood chattel slavery, antebellum Delaware prefigured the Deep South’s era of rampant oppression of African Americans in the postwar, post-abolition years.

Contemporary journalist Douglas A. Blackmon, in his seminal, Pulitzer Prize-winning book *Slavery by Another Name* (2008), investigates the fate of African Americans in the South in the years after the Civil War. Blackmon explains that peonage and the leasing of convicts to private companies—in other words, “slavery by another name”—effectively kept Southern blacks in servitude until at least World War II. Using the loophole that the Thirteenth Amendment “specifically permitted involuntary servitude as a punishment for ‘duly convicted’ criminals,”⁶⁴ Southern states tried and convicted thousands of African Americans, then sold them to large plantations and industrial corporations to undertake back-breaking, deadly, unpaid labor in fields or mines or factories.

The laws that served to land these African Americans in prison—the laws that contributed to a vicious cycle of black servitude and economic immobility for nearly a century after the *de jure* end of slavery—were chillingly similar to some of the black code laws passed in places such as antebellum Delaware. Vagrancy, described by Blackmon as “the offense of a person not being able to prove at a given moment that he or she is employed,”⁶⁵ was enough to

⁶³ Yates, 215.

⁶⁴ Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008), 53.

⁶⁵ Blackmon, 1.

condemn someone in Alabama to convict labor—provided that that someone was black. Well into the 1900s, vagrancy was “capriciously enforced,” and, even in times of “massive unemployment among all southern men, was reserved almost exclusively for black men.”⁶⁶

Vagrancy, then, and in turn the crux of Southern convict labor, was the ideological heir to a piece of legislation like Delaware’s larceny law, to Delaware’s system—sometimes explicit, sometimes tacit—of disempowering free African Americans and even selling them into (or back into) servitude.

And this, therefore, is the legacy of that overlooked patch of land not quite 2000 square miles in size, of that strip of soil that changed hands from the Swedish to the Dutch to the English, of the First State, of the Quaker outpost, of the tiny border state, of the home of the Big Quarterly, of Yates’ “critical ground,” of the shining example that Lincoln hoped for but never received. This, therefore, is the legacy of the proving ground.

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⁶⁶ Blackmon, 1.

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