

Chapter 8 (11-01-11)

“Indiana Knows No North, No South, Nothing but the Union” Inscription in the Washington Monument

How did Davis Floyd find himself allied with the anti-slavery forces in the Indiana Territory? He had owned slaves in Kentucky and then later in the Florida Territory!

Usually it is ill-advised to look at the end of a book before you know any thing about its middle but occasionally there are exceptions. The following excerpt is from the end of a book entitled, *Indiana—A Redemption from Slavery*:

And now we have come to our journey’s end. We have traced the slavery of Indiana through its origin, its development, and its extermination. If the writer has done his work properly, the reader now realizes that the slavery of Indiana, small as was its actual extent, was the chief agency in the molding of our infant growth. It made political parties, that otherwise would never have existed. It put men in office who but for it might have lived in obscurity. It excluded men from office who but for it would have been on our lists of public men. It put laws on our statute books, and erased them. It put articles in our first Constitution. It was the tap-root of our political growth,—the great central matter of controversy to which all other questions were subordinate. It drew broad party lines here when national party lines were practically blotted out; and when those lines were drawn, leaders of the dominant party were excused for offenses that would otherwise have ended their political careers, while leaders of the opposition suffered for the merest trifles. In short, it made a quarter of a century of our political history, and, at the end of that time, left the people of Indiana more strongly opposed to the institution of slavery than they ever could have been without it. It had some effect, too, in the councils of the nation, long after it had been disposed of; for when in the debate on the California bill, in June, 1850, the question arose as to slavery in the territory acquired from Mexico, the refusals of Congress to admit slavery to Indiana served as precedents against it.

More than this, if our work is well done, justice has been given to an almost forgotten generation of Indiana men. It has at various times been loosely stated that this man from the North, or that man from the South, saved Indiana from slavery. Not so. The men of Indiana did that. We honor [John] Randolph, and [William] Grayson, and

[Thomas] Jefferson for their sentiments, as we do also [Joshua] Coit, and [Nathan] Dane, and [Rufus] King, but these men did not exclude slavery from Indiana, and, if we may believe the testimony that has been cited, they did not intend to do so. That we owe a debt of gratitude to the Congress that made the Ordinance [of 1787], and to those that persisted in maintaining it as it was framed, is evident; but our gratitude cannot flow to either side of the line between North and South. If we consider the benefits derived from the Ordinance, we see benefactors from Virginia and Massachusetts standing side by side. If we look to congressional actions on petitions, we see that every Congress, regardless of politics, declined to amend the Ordinance. If we look to the composition of the congressional committees that acted on the petitions, we find them divided as evenly as possible between the North and the South, usually with an Indiana man in the balance; and of their six reports, three favoring the admission of slavery and three opposing it, we find two favoring and one opposing by chairmen from the North, and one favoring and two opposing by chairmen from the South; in no instance do we find a minority report. If we look to the sentiment of the nation at the climax of the struggle in Indiana in 1807, we find Congress almost a unit for the abolition of the slave-trade, and yet we find no effort in Congress, from any section, to nullify the indenture law, as the anti-slavery men of Indiana had asked them. If we look to the influence of literature, we find nothing from the North that had more effect in Indiana than Jefferson's "Notes on Virginia." At this day, when it seems fashionable to belittle Mr. Jefferson at all opportunities, we commend to the people of Indiana the consideration of how much of the great anti-slavery report of General W. Johnston, and the revolution of sentiment connected with it, may be justly attributed to the influence of the words of Thomas Jefferson. Nor is this suggestion thrown out for the purpose of bringing him into prominence to the disadvantage of his contemporaries from the North. It is merely to restore, for our own purposes, the historical balance which the reaction of recent years has falsified. Nothing can now detract from the influence he had in determining our early controversies, and nothing should obscure his just credit in our remembrance of it. We do not go beyond the bounds of our State to give praise for the final solution of our local slavery question, for Congress put the solution upon the men of Indiana and they worked it out on Indiana soil. For the privilege of solving it, under the Ordinance, without interference of Congress, our thanks go abroad, but to no section. As to this we write, as was inscribed on our contribution to the great [Washington] monument to the greatest of Americans: INDIANA KNOWS NO NORTH, NO SOUTH, NOTHING BUT THE UNION.

J. P. Dunn, Jr., *Indiana A Redemption from Slavery*, Houghton, Mifflin and Company, The Riverside Press, Cambridge, 1900, pp. 442-444.

Author Dunn did not get everything right when he wrote this in 1889 (published in 1900) but he came close. Unfortunately, he did not have access to certain correspondence between John Badollet and his Swiss boyhood friend, Albert Gallatin, but more about that later.

Slavery Issue in Indiana Territory

Davis Floyd served as the sole Clark County representative of the Indiana Territorial House of Representatives from January 3, 1805 until February 2, 1807. He did not run for re-election for reasons that will become apparent from other portions of this book but on June 15, 1807 he was elected the clerk of the House. Floyd was in the thick of the controversy over whether slavery should be permitted in Indiana. Which side was he on? It has been written that "Floyd had owned slaves in Kentucky" and that apparently "there is no evidence that he was an abolitionist." It is also known that he owned at least one slave when he died. Gov. William Henry Harrison, Floyd's friend, was vehemently proslavery, in part because his constituents had been slave owners in the area of Vincennes since 1749. They believed they should have the privilege of owning slaves because it has always been guaranteed them, first by Louis XIV when France claimed the territory, and then by the British who later claimed it. Harrison was interested not only in accommodating his constituents in slave ownership but also retaining his own slaves.

Davis Floyd's Roots

Davis Floyd's blood uncle, Colonel John Floyd, was a slave owner in Virginia and Kentucky. The following excerpt appears in an article entitled "Slavery in Early Louisville and Jefferson County, Kentucky":

...Colonel John Floyd (1750-1783) was one of the earliest and certainly one of the most historically significant settlers of Jefferson County. Floyd, described as being of mixed white and Native-American

(Powhatan) ancestry, was appointed deputy surveyor of Fincastle County, Virginia, by Colonel William Preston and was dispatched to the west in April 1774 to survey lands granted to Preston and other veterans of the French and Indian War. Floyd spent long periods in the Kentucky country in 1774, 1775, and 1776, visited Boonesborough, and other early settlements, and gained a well-deserved reputation as a skilled woodsman, a natural leader, and even a scholar. Floyd accompanied Daniel Boone in pursuit of the Shawnee and Cherokee who kidnapped Boone's daughter Jemima in July 1776. On 8 November 1779, Floyd settled permanently in Jefferson County, six miles east of town [of Louisville] on Beargrass Creek and began building the house and stockade known as Floyd's Station. Part of modern-day St. Matthews, Breckinridge Lane, Seneca Park, and Bowman Field now occupy the land surveyed by Floyd in 1774 and settled by him in 1779.

Because of his considerable abilities, Floyd became a central figure, not only in early Jefferson County but in Kentucky as well. Floyd died in April 1783 after having been mortally wounded by Native Americans two days earlier--an ambush he literally invited by wearing his bright red wedding shirt. This heroic young adventurer was born in a slaveholding society and into a family that, in times of good fortune, owned slaves; Floyd's mother [Abadiah Davis Floyd] grew into adulthood in a family that owned ten to fifteen slaves. Floyd, as he rose to ever higher office, owned slaves both in Virginia and in Kentucky....

J. Blaine Hudson, "Slavery in Early Louisville and Jefferson County, Kentucky," *The Filson Club History Quarterly*, July 1999, pp. 274-275.

Davis Floyd and his parents accompanied John Floyd and his wife and brand new baby and other Floyd family members as they traversed the Wilderness Road from Virginia over the Cumberland Gap and into Kentucky and Jefferson County in 1779. Davis Floyd grew up on Bear Grass Creek in eastern Jefferson County in what was then the western frontier of the United States. He and his family moved to Indiana in 1800 when the Indiana Territory was created. Who then were the men who favored slavery in the Indiana Territory and who were opposed to it? Who were the men from the Territory who saved Indiana from slavery?

Jefferson's Influence over Indiana's Slavery Issue

Author Dunn refers in the excerpt at the beginning of this chapter to *Notes on the State of Virginia*, originally written by Thomas Jefferson in 1781, updated and enlarged by him in 1782-83, and published in Paris in 1784, which was his only full-length book; it was a commentary on the institutions and resources of his great state. It is now a fact that Jefferson had an on-going sexual relationship with Sally Hemings, one of his slaves. He was a widower, she was beautiful, he was rich (although cash poor), and she was the blood half-sister of his beloved, deceased wife, Martha. Such a relationship was perfectly natural. One can even speculate they loved each other fervently and that their relationship was not master-slave, but lovers. Jefferson was a slave owner but sometimes criticized the institution. Some of these criticisms appeared in his published *Notes*:

During the regal government [before America gained its independence from England], we had at one time obtained a law, which imposed such a duty on the importation of slaves, as amounted nearly to a prohibition, when one inconsiderate assembly, placed under a peculiarity of circumstance, repealed the law. This repeal met a joyful sanction from the then sovereign, and no devices, no expedients, which could ever after be attempted them, could succeed in getting the royal assent to a renewal of the duty. In the very first session held under the republican government, the assembly passed a law for the perpetual prohibition of the importation of slaves. This will in some measure stop the increase of this great political and moral evil, while the minds of our citizens may be ripening for a complete emancipation of human nature.

There must doubtless be an unhappy influence on the manners of our people produced by the existence of slavery among us. The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other.

Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep forever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events; that it may become probable by supernatural interference.... I think a change already perceptible, since the origin of the present revolution. The spirit of the master is abating, that of the slave is rising from the dust, his condition mollifying, the way I hope preparing, under the auspices of heaven,

for a total emancipation, and that this is disposed, in the order of events, to be with the consent of the masters, rather than by their extirpation.

Thomas Jefferson, *Notes on the State of Virginia*, Query 18, "Manners 'The particular customs and manners that may happen to be received in that state [Virginia]?"

Slavery did not end the way Jefferson envisioned. He probably justified his ownership of slaves by treating them better than most slave holders did. A terrible Civil War had to be fought with the sacrifice of hundreds of thousands of lives to end legal slavery in the United States. Jefferson was a visionary and he was hoping for the best resolution. Jefferson was also a deist; he believed in a God in heaven but not a God on earth in the form of the man Jesus. He could not fathom that God came to earth as a human being. Jefferson was depending on God's control to end this "great political and moral evil." It did take Godly men to accomplish this end.

As a sidebar Jefferson not only owned a *Bible* but also had, while he was a law student at the College of William and Mary in Virginia in 1765, purchased a two volume copy of *The Koran*. While the *Qur'an* recognizes the existence of God it does not recognize Jesus as the son of God or as God on earth. It does recognize Jesus as a great prophet. If Jefferson read *The Koran* he probably found it tenets compatible with his faith beliefs. After the Library of Congress was burned by the British in the War of 1812, Jefferson sold a goodly portion of his personal library to the United States and his copy of *The Koran* is at the Library of Congress in Washington, D. C. today. Jefferson catalogued his copy of *The Koran* under the "jurisprudence" section of his library. His copy was edited in English by Englishman George Sale in 1764. In an article entitled "Thomas Jefferson's Qur'an" written by Sebastian R. Prange in the July/August 2011 copy of *Saudi Aramco World*, the author accredited Sale with stressing Muhammad's role as a "lawgiver" and the *Qur'an* as a model of a separate legal tradition. The preface of Sale's *Qur'an* contains "a section on Islamic civil law that repeatedly points out parallels to Jewish legal precepts in regard to

marriage, divorce, inheritance, lawful retaliation and the rules of warfare.” It is unknown whether the *Qur’an* had any influence on Jefferson’s attitude on slavery.

There is further evidence of Jefferson’s antislavery attitudes in the Northwest Territory. In 1786 John or James Lemen (Lemon) and his family moved to Kaskaskia on the Mississippi River. Thereafter, he moved to New Design where he was a Baptist minister. Part of his diaries show that he was a friend of Jefferson’s and that Jefferson had urged him to actively oppose slavery in the Indiana Territory.

Antislavery Article of Northwest Ordinance of 1787

In order to understand the early nineteenth century slavery issue in Indiana, one must go back to the creation of the Northwest Territory by Congress in 1787 by the Ordinance bearing the date of that year. Article 6 of the Ordinance provided:

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 whom 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.

An Ordinance for the government of the Territory of the United States northwest of the River Ohio, Article 6, July 13, 1787.

The readers of this book are directed to Appendix I and encouraged to read the entire Ordinance if they have not done so yet. Historians have devoted much time to the authorship of this anti-slavery clause but a discussion of that question goes beyond the scope of this book. Likewise, a discussion of the interpretation of the clause goes beyond the scope of this book. Suffice it to say it is unclear who authored the clause and there were other provisions in the Ordinance inconsistent with the plain meaning of the anti-slavery clause. The

proviso of Article 6 allowed law enforcement officers to return escaped slaves in the Territory to the state of their origin under certain conditions. As will be seen Floyd as Sheriff of Clark County from September 17, 1802 to December 12, 1806 was confronted from time to time with enforcing this provision. Did this task influence his attitude about slavery?

Creation of Territories in Northwest Territory/Indiana Territory

The Ordinance of 1787 provided a mechanism for territories to be created within the geographical boundaries of the Northwest Territory. The Territory consisted of what today are the states of Ohio, Indiana, Illinois, Michigan, Wisconsin, and part of Minnesota. The Indiana Territory was created on May 7, 1800 by an Act of Congress, and on February 3, 1801 Gov. William Henry Harrison, by way of a proclamation, created Clark County. It was carved out of the eastern part of Knox County and included all of the land east of Blue River, which is the present dividing line between Harrison and Crawford Counties, and all of the land south of the east fork of White River. It did not include the "Gore" region in eastern Indiana. Floyd served as the first Register of Deeds in Clark County from February 4, 1801 until September 17, 1802 when he became Sheriff. He was a political officer in the truest sense of the words.

Grades of Government in Indiana Territory

The Ordinance of 1787 provided for two grades of government in the territories after they were created but before they could become states. The "third grade" was statehood. The "first grade" consisted of a governor and judges appointed by the Congress of the United States. It was then up to the governor to decide when the territory was mature enough to transition to the "second grade." The main difference between the first and second grades was in the first grade the Territory was governed by appointed men while in the second grade it was governed in part by men elected by eligible voters. On December 5, 1804 Gov.

Harrison issued a proclamation calling for the election of nine representatives to the Indiana Territorial House of Representatives, two from Knox County (the Vincennes Tract), one each from St. Clair and Randolph Counties (Illinois country), one from Dearborn County (the "Gore" or the Whitewater Valley), one from Clark County (Clark's Grant), and three from Wayne County (Michigan country). Accordingly, on January 3, 1805 Floyd was elected by the citizens of Clark County eligible to vote. It is not known how many voters there were in Clark County at the time. However, in 1802 there were 51 and in 1809 there were 288. Floyd's name was on both lists which indicate that he was an eligible voter in Clark County in those years and probably the in-between years. Gov. Harrison's proclamation also called for the elected members to preliminarily convene at Vincennes on February 1, 1805 to nominate ten men to serve on a Legislative Council. The Legislative Council was a second legislative house to be composed of five appointed men. It is believed that Floyd along with one representative from Dearborn County and two from Knox County attended this preliminary session which lasted five days. Ten men including two from Clark County were nominated by the four attendees. Their respective names and counties were forwarded by Gov. Harrison to Pres. Jefferson whose duty under the Ordinance was to narrow the list to five names to be approved by the U. S. Senate. Jefferson declined to select anyone on the basis that he knew none of men on the submitted list. Instead, he forwarded Gov. Harrison a blank instrument and asked him to fill in the names. Samuel Gwathmey was Gov. Harrison's choice for Clark County. His mother, Ann Clark, was Gen. George Rogers Clark's oldest sister. The completed instrument was returned to Pres. Jefferson and approved by the U. S. Senate on December 23, 1805, several months after the conclusion of the First Session of the First General Assembly of the Indiana Territory held during the summer of 1805 in Vincennes, Indiana Territory.

Requirements for Enactment of Laws during Grade One

Section 5 of the Ordinance of 1787 provided a mechanism during “grade one” for the enactment of laws in the Territories.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.

An Ordinance for the government of the Territory of the United States northwest of the River Ohio, Section 5, July 13, 1787.

Activity Prior to the Vincennes Convention

Prior to the creation of the Indiana Territory, petitions from French inhabitants in the Illinois country favoring the repeal of the anti-slavery provision in the Northwest Ordinance were sent to Congress. Before Harrison was appointed Governor of the Territory another petition from the Illinois country advocated for a limited kind of slavery. Then in 1801 petitions and letters from the same constituency were sent to Gov. Harrison asking that the Indiana Territory advance from the first grade to the second grade of government. Harrison opposed this on the basis that this advance would cost the government more money to maintain. There was a brief interlude and then the governor was asked to call a convention to determine the propriety of repealing the anti-slavery article. The proslavery forces were not happy with the unrepresentative form of government as embodied in Gov. Harrison and his judges and attempted to move it into a semi-representative form of government by the citizenry. They were not immediately successful.

1802 Vincennes Convention and Resulting Petition Favoring Slavery

Gov. Harrison decided to hold the requested convention to consider altering the anti-slavery provision in the Northwest Ordinance. Harrison served as president and the delegates were from Clark, Knox, Randolph, and St. Clair counties. The result of this convention held in Vincennes from December 20 thru December 28, 1802 and supposedly made up of men from all parts of the Indiana Territory was petitions (frequently called "memorials" or "resolutions") favoring the temporary suspension of the anti-slavery article. One such petition recited:

The Sixth Article of Compact between the United States and the people of the Territory, which declares there shall be neither slavery nor involuntary servitude in it, has prevented the Country from populating, and been the Reason of driving many valuable Citizens possessing Slaves to the Spanish side of the Mississippi, most of whom but for the prohibition contained in the Ordinance would have settled in this Territory, and the consequences of keeping that prohibition in force will be that of obliging the numerous Class of Citizens disposed to emigrate, to seek Asylum in that country where they can be permitted to enjoy their property. Your memorialists however and the people they represent do not wish for a repeal of the article entirely, but that it may be suspended for a Term of Ten Years and then to be again in force, but that the slaves brought into the Territory during the Continuance of this Suspension, and their progeny, may be considered and continued in the same state of Servitude, as if they had remained in those parts of the United States where Slavery is permitted and from whence they may have been removed.

Dunn, *Indiana A Redemption from Slavery*, pp. 305-306.

The argument made in this petition was that Article 6 needed to be suspended for a term of ten years to prevent men owning slaves in the Territory from leaving and crossing the Mississippi River where slave ownership was allowed and to assist slave owners from slave holding states to immigrate into the Territory with their slaves. The petition wanted not only the slaves brought into the Territory to remain slaves but also their "progeny," meaning their descendants, to become and remain slaves upon and from their births. Gov. Harrison supported the petition supposedly because he believed that the petition was supported by

the attendees at the convention. It will be seen that this belief was erroneous and may have been contrived by him.

Clark County's Involvement in 1802 Vincennes Convention

Did representatives from Clark County attend the 1802 Vincennes convention? Author Dunn mentions that "an old resident hazards the conjecture that they [the Clark County representatives] were Davis Floyd and one of the Beggs brothers." The strongest reason to suggest that Floyd and one of the Beggs brothers were present is a recitation in the October 10, 1807, Clark County counter-petition against slavery (more about this later):

In the year 1802, at a special convention of delegates from the respective counties, a petition was forwarded to Congress to repeal the sixth article of compact contained in the ordinance; but the representation of all of the Territory east of Vincennes were present, and were decidedly opposed to that part of the petition.

The Laws of Indiana Territory 1801-1809, pp. 518-519.

The three Beggs brothers from Clark County were present when the 1807 meeting was held to approve the counter-petition and one of them was the chairman of the meeting, and Floyd was the secretary. Who would know better what went on in the 1802 convention than these two men if they attended the convention? The best evidence is that one of the Beggs brothers was present with somebody else. There is no doubt that for some reason their opposition was ignored. It is likely that the rest of the attendees at this convention were proslavery men. There would be other instances of "dirty politics" on the slavery issue.

Beggs Brothers and James N. Wood, Clark County Antislavery Men

However, Floyd may not have attended the 1802 Vincennes convention at least as a delegate. According to a section in the *Journals* entitled "Sketches of

Members of the Territorial General Assembly," Charles Beggs and James N. Wood went as Clark County delegates to this convention. A certificate of election dated December 8, 1802 allegedly certified that Beggs and Wood were the two delegates from Clark County. Beggs and his family moved to Clark County shortly after its organization in 1801. Beggs would later serve as a captain in the First Regiment of Indiana militia and commanded his own company of light dragoons (cavalry) in the Battle of Tippecanoe. Begg's brother, James Beggs, also a resident of Clark County, served as a member of the Indiana Territorial House of Representatives in 1807, 1808, and 1809, and in the Legislative Council in 1810, 1811, 1813, and 1813-14. He, Charles Beggs, and their other brother, John Beggs, were ardent antislavery men. They all were part of the committee that approved the 1807 Clark County counter-petition against slavery in which committee John served as chairman and Floyd as clerk. James N. Wood's name was not on the list of voters of Clark County in 1802. However, the names of George Wood and Jon. H. Wood were. Were they brothers? Incidentally, the names of both Charles Beggs and Davis Floyd were on this list. The Clark County census for 1807 shows the names of Charles Beggs and James N. Wood. Wood is a signatory to the disputed 1803 antislavery counter-petition discussed in the next section. Above his signature are the words, "I am opposed to the introduction of slavery."

Gov. Harrison's 1803 Note on the Government of Indiana Territory

On January 1, 1803 Gov. Harrison reported on several issues to those "who may be interested in the affairs of the Indiana Territory." The "Note" addressed the Vincennes convention:

Accordingly, last fall, the Governor [Harrison] Visited the two western counties [Randolph and St. Clair in the Illinois country], and took in the claims of land without deciding on them, but said he would consider them at his leisure.--During his visit to Illinois [country], he let the people know that it would be agreeable to him, if they would

petition him to call a convention, under the pretence of considering the expediency of the admission of slavery in the [Indiana] Territory.

Clarence Edwin Carter, *The Territorial Papers of the United States*, Volume VII, The Territory of Indiana 1800-1810, p. 138.

At that time the Indiana Territory consisted of all of Indiana, Illinois, Michigan, Wisconsin, and part of Minnesota. The real purpose of the convention was to garner the votes for his reelection as governor of the Territory. And he got both: reelection and slavery.

Rev. Lemen's Diary Entry on Slavery in the Indiana Territory

On May 3, 1803 at New Design Rev. Lemen entered the following in his diary:

As Thomas Jefferson predicted they would do, the extreme southern slave advocates are making their influence felt in the new territory [Indiana] for the introduction of slavery and are pressing Gov. William Henry Harrison to use his power and influence for that end. Steps must soon be taken to prevent that curse from being fastened on our people.

Dunn, Jacob Piatt, *Indiana and Indianans*, Vol. I, The American Historical Society, Chicago and New York, 1919, p. 248.

1803 Law concerning Servants

As previously noted during grade one, the Territory was governed by a governor and two judges. In 1803 Gov. Harrison, and Judges Thomas T. Davis and Henry Vander Burgh enacted "A Law concerning Servants," pursuant to the provision in the Ordinance cited above. Judge Davis would later play several roles in Floyd's life. The law was adopted from the Virginia code and was published on September 22, 1803 and went into effect the following November 1. This law provided as follows:

Indiana Territory. *A Law concerning Servants.*

Adopted from the Virginia code, and published at Vincennes, the twenty-second day of September one thousand eight hundred and

three, by William Henry Harrison, governor, and Thomas T. Davis, and Henry Vander Burgh, judges in and over said Territory.

1st. All negroes and mulattos (and other persons not being citizens of the United States of America,) who shall come into this territory under contract to serve another in any trade or occupation, shall be compelled to perform such contract specifically during the term thereof.

2nd. The said servants shall be provided by the master with wholesome and sufficient food, cloathing and lodging, and at the end of their service if they shall not contracted for any reward, food, cloathing and lodging, shall receive from him one new and complete suit of clothing, suited to the season of the year, to-wit: a coat, waistcoat, pair of breeches and shoes, two pair of stockings, two shirts, a hat and blanket.

3rd. The benefit of the said contract of service, shall be assignable by the master to any person being a citizen of this territory, to whom the servant shall in the presence of a justice of peace freely consent that it shall be assigned, the said justice attesting such free consent in writing, and shall also pass to the executors, administrators and legatees of the master.

4th. Any such servant being lazy, disorderly, guilty of misbehavior to his master or his masters family shall be corrected by stripes on order from a justice of the county wherein he resides; or refusing to work, shall be compelled thereto in like manner, and moreover shall serve two days for every one he shall have so refused to serve, or shall otherwise have lost without sufficient justification. All necessary expences incurred by any masters for apprehending and bringing home any absconding servant, shall be repaid by further service after such rates as the court of the county shall direct; unless such servant shall give security to be approved of by the court for repayment in money, within six months after he shall be free from service, and shall accordingly pay the same.

5th. If any master shall fail in the duties prescribed by this act, or shall be guilty of injurious demeanor towards his servant, it shall be redressed on motion, by the court of the county wherein the servant resides, who may hear and determine such cases in a summary way, making such orders thereupon as in their judgment will relieve the party injured in the future.

6th. All contracts between master and servant during the time of service, shall be void.

7th. The court of every county shall at all times receive the complaints of servants, being citizens of any one of the United States, against their masters or mistresses, alledging underserved or immoderate correction, insufficient allowance of food, raiment or lodging, may hear and determine such cases in a summary way, making such orders thereupon, as in their judgment will relieve the party in future; and may also in the same manner hear and determine complaints of masters or mistresses against their servants for desertion without good cause, and may oblige the latter for loss thereby occasioned, to make retribution, by further services, after the expiration of the times for which they had been bound.

8th. If any servant, shall at any time, bring in goods or money, or during the time of their service, shall, by gift or other lawful means acquire goods or money, they shall have the property and benefit thereof, to their own use. And if any servant shall be sick or lame, and so become useless or chargeable, his or her master or owner, shall maintain such servant until his or her whole time of service shall be expired. And if any master or owner shall put away the lame or sick servant under pretence of freedom, and such servant becomes chargeable to the county, such master or owner shall forfeit and pay thirty dollars to the overseers of the poor of the county wherein such offence shall be committed to the use of the county, recoverable with costs, by action of debt in any court of common pleas of this territory; and moreover shall be liable to the action of said overseers of the poor, at common law for damages.

9th. No negro, mulatto or Indian shall at any time purchase any servant, other than of their own complexion; and if any of the persons aforesaid, shall nevertheless presume to purchase a white servant, such servant shall immediately become free, and shall be so held deemed and taken.

10th. No person whatsoever shall buy, sell, or receive of, to, or from any servant, any coin or commodity whatsoever, without leave or consent of the master or owner of such servant; and if any person shall presume to deal with any servant without such leave or consent, he or she so offending, shall forfeit and pay to the master or owner of such servant four times the value of the thing so bought, sold or received; to be recovered with costs by an action upon the case in any court of common pleas of this territory; and shall also forfeit and pay the further sum of twenty dollars to any person who will sue for the same; or receive on his or her bare back, thirty nine lashes, well laid on, at the public whipping post, but shall nevertheless be liable to pay the costs of such suit.

11th. In all cases of penal law, where free persons are punishable by fine, servants shall be punished by whipping, after the rate of twenty lashes for every eight dollars, so that no servant shall receive more than forty lashes at any one time, unless such offender can procure some person to pay the fine.

12th. Every servant upon the expiration of his or her time, and proof thereof made before the court of the county where he or she last served, shall have his or her freedom recorded, and a certificate thereof under the hand of the Prothonotary [chief clerk in a court], which shall be sufficient to indemnify any person for entertaining or hiring such servant; and if such certificate happens to torn or lost, the Prothonotary, upon request shall issue another, reciting therein the loss of the former. And if any person shall harbour or entertain a servant, not having and producing such certificate, he or she, shall pay to the master or owner of such servant, one dollar for every natural day he or she shall so harbour or entertain such runaway; recoverable with costs, by action of debt, in any court of common pleas of this territory. And if any runaway shall make use of a forged certificate, or after delivery of a true certificate to the person hiring him or her, shall steal the same, and thereby procure other entertainment, the person entertaining or hiring shall not be liable to the said penalty, but such runaway besides making reparation for loss of time, and charges of recovery, shall stand two hours in the pillory, on a court day, for making use of such forged or stolen certificate., and the person forging the same shall forfeit and pay thirty dollars; one moiety to the territory, and the other moiety to the owner of such runaway, or the informer, recoverable with costs, in any court of common pleas of this territory; and on failure of present payment, or security for the same within six months such offender shall receive thirty-nine lashes on his or her back, well laid on, at the common whipping post. And where a runaway shall happen to be hired upon a forged certificate, and afterwards denies the delivery thereof the onus probandi [burden of proof] shall lie upon the party hiring such runaway.

13th. This law shall commence and be in force from and after the first day of November next [1803].

Published at Vincennes, the day and year above written, by, William Henry Harrison, governor, and Thomas T. Davis, and Henry Vander Burgh, judges in and over the said territory.

**William Henry Harrison
Thomas Terry Davis
Harry Vander Burgh**

The Laws of Indiana Territory 1801-1809, Edited with Introduction by Francis S. Philbrick, Professor of Law, University of Illinois, Collections of the Illinois State Historical Library, Volume XXI, Law Series, Reprinted with Supplementary Indiana Material, by the Historical Bureau of the Indiana Library and Historical Department, Indianapolis, 1931, pp. 42-46.

This law assumed that the contract was entered into voluntarily which would be difficult to disprove in most cases. The 1787 Ordinance outlawed slavery and involuntary servitude; but it did not outlaw voluntary servitude. The first three sections of the new law did not seem to contradict Article 6 of the Ordinance and it was a law of one of the "original States." However, beginning with the next section of the Law concerning Servants, it becomes a slave statute. Section 4th provided strips or beatings for any lazy or disobedient servant and repayment to the master of two days of service for each day of laziness or disobedience. Section 5th provided a little relief for the servant whose rights were violated but his or her rights were determined summarily by the court which gave the master the advantage of a biased judge or magistrate. Summary hearings were by definition hasty and arbitrary. Section 6th disallowed a servant from bargaining to change the term of his or her voluntary servitude. Section 7th seemed to nullify Section 5th. Servants must be citizens of one of the United States of America. Most so-called servants did not hold citizenship in any state. Even then, their rights were determined by the court "in a summary way." Everything was written to give the master the advantage and the servant the disadvantage. Section 8th gave servants some rights over their own property including goods, money, gifts, etc. and provided that masters were to maintain sick or lame servants. Section 9th provided that only a negro could own a negro servant; a mulatto, a mulatto servant; and an Indian, an Indian servant, and that any attempt by any of these to own a white servant was null and void. Section 10th provided that no one could give money or goods to a servant without the consent of the master. Section 11th is perhaps the most vicious. It provided that where free people are punishable by fine for any violation of a penal law, servants were to be punished by whipping not to exceed "forty lashes at any

one time....” Section 12th provides a mechanism for a servant to obtain a certificate indicating that he or she had completed the term of his or her voluntary servitude. The overall effect of the law was a slightly modified slave law. Written certificates evidencing emancipation from slavery or the end of voluntary servitude were frequently the most important document that its carrier possessed.

Thirty-nine lashes were Biblically significant because Paul, the New Testament Apostle, reported in 2 Corinthians 11:24 that “Five different times the Jewish leaders gave me thirty-nine lashes.” Maybe that was the largest number of lashes that a reasonably healthy man (or woman) could endure in one beating. The Indiana law apparently added one additional lash for good measure.

Clark County’s 1803 Anti-slavery Counter Petition

The 1803 law did not grow out of the convention because that law did not suspend the anti-slavery article in the Northwest Ordinance. According to Dorothy Burne Goebel, Ph.D. in her book entitled *William Henry Harrison, A Political Biography*:

The part played by Harrison in the enactment of these laws brought down upon his head the anger of the anti-slavery faction. In February, 1803 a petition was sent to Congress by the citizens of Clark County, a section in the southeastern part of Indiana. The purpose of their petition was to counteract the impression that Harrison deserved the confidence of the people. They stated boldly that his principles were “repugnant to Republicanism,” and scored his sanction of the law regulating the relation of master and servant. The petition closed with a request for a governor with “principles of liberty” and sentiments “more congenial with those of the people.”

Dorothy Burne Goebel, Ph.D., *William Henry Harrison,--A Political Biography*, Indiana Library and Historical Department, 1926, p.78.

A footnote to this paragraph says "Petition of the citizens of Clark County, 1803, Senate Files, Envelope 'Indiana.'" However, a search of the archives fails to produce any such petition. There is a reference to a similar petition in *The Territorial Papers of the United States*. The date given to that petition is "[No date, 1809]." Is it possible that the date of 1809 is wrong? The answer to that question is a "maybe yes." Author Goebel refers to two clauses in an 1803 petition. In order to review these clauses it is necessary to set forth the body of the disputed petition:

To the Honorable the President and Senate of the United States of America; We Your Petitioners of Clark County, and Indiana Territory, beg leave to represent, that whereas sundry petitions are in Circulation throughout the Territory, the tendency of which are to deceive the General Government, by inducing a belief that his Excellency William Henry Harrison has in his Official conduct, acted in such a manner as to deserve the Confidence of the People of this Territory--We think it a duty we owe Our Country, to declare, that we disapprove the sentiments contained in those petitions before-mentioned, that his principles are repugnant to the Spirit of Republicanism--of the several charges against him, which our delegate has been instructed to lay before you & on which our opinions are founded: We need Only mention his sanctioning of a law for the Introduction of Negroes & notwithstanding his Oath of Office, and the known wishes of a large majority of the People of this Territory--We therefore pray that your Honorable body would appoint us a Governor whose Sentiments are more Congenial with those of the People, and with those principles of Liberty which are the greatest Security of our rights; and as is duty bound we your Petitioners will ever pray &

Carter, *The Territorial Papers of the United States*, Volume VII, p. 705.

The petition was then signed by 195 males. Floyd was not one of the signatories. Since he was Sheriff of Clark County at that time, a position to which he was appointed by Gov. Harrison, he may have been reluctant to sign the petition, or he had not yet transferred his allegiances to the anti-slavery side. The petition goes beyond the issue of slavery; it advocates the recall of Gov. Harrison. Is it possible that the 1809 petition was a duplicate of the 1803

petition? The wording of the 1803 petition cited by Author Goebel is slightly different from the words in the petition identified with the 1809 date. One of the signatories to the 1809 petition was James N. Wood, who wrote "I am opposed to the introduction of slavery" next to his signature. In all likelihood this is the same James N. Wood who attended the 1802 convention held in Vincennes when the slavery issue was debated.

1803 U. S. Congressional Committee Report Disfavoring Slavery

On March 2, 1803, in response to the petition from the Vincennes convention in 1802 and the Clark County counter-petition issued in 1803, a Congressional Committee on Public Lands chaired by John Randolph of Virginia issued a report which read as follows:

Mr. Randolph, from the committee to which was referred a letter from William Henry Harrison, president of the convention, held in Vincennes, declaring the consent of the people of Indiana to the suspension of the sixth article of compact between the United States and the people of that Territory; also a memorial and petition of the inhabitants of the said Territory; made the following report:

That the rapid expansion of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and settlement of colonies in that region. That this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known to that quarter of the United States: that the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the northwestern country, and to give strength and security to that extensive frontier. In the salutary operation of this sagacious and benevolent restraint, it is believed that the inhabitants of Indiana will, at no very distant day, find ample remuneration for a temporary privation of labor and of emigration....

From such consideration as they have been enabled to bestow on the subject at this late period of the session, and under the pressure of accumulating business, they recommend the following resolutions, which are respectfully submitted to the judgment of the House:

1. Resolved, That it is inexpedient to suspend, for a limited time, the operation of the sixth article of compact between the original states and the people and States west of the River Ohio....

American States Papers, Public Lands, Vol. 1, 1789-1809, No. 76 at p. 146.

From the wording in the foregoing committee report it appears that both Gov. Harrison and certain inhabitants of the Indiana Territory submitted documents in the form of letters, petitions, and memorials to Congress for its consideration. It is therefore likely that the Clark County citizens had submitted a counter-petition to Congress opposing the suspension of Article 6. Whether it was the petition cited above or some lost document is not definitely known. Congressman Randolph as Chairman of the Committee condemned Gov. Harrison and his convention's desires as "inexpedient." While Congress never acted on the report, a Southern Congressman and his Committee had sided with the anti-slavery inhabitants of the Territory. The seeds of opposition had been planted. Randolph, who was from Roanoke, Virginia, owned 383 slaves all of whom he inherited or were born at Roanoke. He never bought or sold slaves. His last will and testament gave his "slaves their freedom" saying that I "heartily (regret) that I have been the owner of one."

1804 U. S. Congressional Committee Report Favoring Slavery

However, Congress changed its mind during its next session in 1804. The following report and resolution were communicated to the House of Representatives on February 17, 1804:

Mr. Rodney, from the committee to whom were referred a letter from William Henry Harrison, president of the general convention of the representatives of the people of the Indiana Territory, also a memorial and petition from the said convention, together with the report of a former committee on the same subject at the last session [1803] of Congress, made the following report:

That, taking into their consideration the facts stated in said memorial and petition, they are induced to believe that a qualified suspension, for a limited time, of the sixth article of compact between the original States and the people and States west of the river Ohio, might be productive of benefit and advantage to the said Territory....

After a careful review, and an attentive consideration of the various subjects contemplated in the memorial and petition, the committee respectfully submit to the House the following resolutions, as embracing all the objects which require the attention of Congress at this period:

Resolved, That the sixth article of the ordinance of 1787, which prohibited slavery with the said Territory, be suspended, in a qualified manner, for ten years, so as to permit the introduction of slaves, born within the United States, from any of the individual States: And provided further, That the descendants of all such slaves shall, if males, be free at the age of twenty-five years, and if females, at the age of twenty-one years....

American States Papers, Misc., Vol. 1, 1789-1809, No. 173 at p. 387.

Caesar A. Rodney was a lawyer from Delaware. He was a leader in the Jeffersonian party, later known as the Democratic-Republican Party. Harrison and the proslavery men got their way this time. However, Congress did not act on the report. But, Harrison and his supporters got busy drafting a law to be introduced into the First Session of the First General Assembly of the Indiana Territory held in the summer of 1805. But Floyd would be there.

John Badollet, Antislavery Advocate in Vincennes Beginning 1804

Several men played major roles in the Indiana Territory slavery issue in the early 1800's. It is likely that Floyd met or already knew John Badollet when he attended the preliminary session of the First Session of the First General Assembly of the Indiana Territory in Vincennes in February 1805. Badollet had moved to Vincennes in 1804 and his family followed him the next year. Floyd is mentioned in several letters written by Badollet to his boyhood friend, Albert Gallatin, who was the Secretary of Treasury for Pres. Jefferson and Pres. Madison from 1801 to 1813. Badollet and Gallatin were both born in Geneva,

Switzerland, in 1761. The two men attended the same college in Geneva where they received an education in the classical languages, algebra, geometry, and the natural sciences. Afterwards, Gallatin traveled to America. Badollet remained behind and studied religion at Clairac in France. Eventually, in 1786 he followed his friend to America to Gallatin's home in Pennsylvania. However, the paths of the two friends soon diverged for the second time. Gallatin got involved in politics including stints in the U. S. Senate and Congress and as Jefferson's Secretary of Treasury. Badollet remained in Pennsylvania for eighteen years as a farmer and then moved to Vincennes. After 1804 Badollet and Gallatin would see each other only one time, that being in 1825. However, the two men engaged frequently in corresponding with each other as evidenced by a compilation of their letters in a book entitled, *The Correspondence of John Badollet and Albert Gallatin 1804-1836*.

In 1804 Pres. Jefferson appointed Badollet as register of the land office in Vincennes upon the recommendation of Gallatin, supposedly the only political recommendation of that sort he ever made. In his recommendation to Jefferson on March 28, 1804 Gallatin said "For the register at Vincennes permit me to recommend to you John Badolett...I know no man of more strict integrity or better qualified for the office, and he has long been desirous to remove to that place, where his tried republicanism would I think, be useful." Badollet held that office continuously until 1835, the year before he died. However, in a letter from Badollet to Gallatin dated December 16, 1804, the former advised his friend that he was "entertain[ing] serious thoughts of resigning this office." (Gayle Thornbrough, *The Correspondence of John Badollet and Albert Gallatin 1804-1836*, Indiana Historical Society, Indianapolis, Indiana, p. 39). He noted there was insufficient work in the land office for him to make a living for himself and his family and "Negroe Slavery is also going to be introduced, & that circumstance alone would prove sufficient to drive me hence." (See p. 40.) Had Badollet's religious training in France made him aware of the horrors of slavery,

had he been influenced by his friends in Pennsylvania, or had he been persuaded to that position by one or more of his acquaintances in the Indiana Territory? Had he seen the horrors of slavery in his travels? One can only speculate. Nevertheless, Gallatin's commendation on Badollet's moral fiber does not require any speculation. He was a man of "strict integrity," and except from political attacks by his adversaries his integrity remained intact until his death.

The reports by Badollet of activities in the Indiana Territory and then the State of Indiana in his letters to Gallatin have to be given considerable reliability because of the factors cited above. And further, history has not disproved the facts that he reported.

Antoine vs. Floyd et al, Circuit Court of Jefferson County, Kentucky, 1804

Floyd had one misadventure in 1804 which could have been interpreted as proslavery conduct. Sometime that year Joseph Antonie (Antoine), a "man of color" complained that he had been emancipated by his master in Havana, that he came from there into Virginia where he took a "negroe" wife who was a slave, that one Purcel took him and his wife to Vincennes where Purcel attempted to indenture Antonie to himself, and that when Antonie objected, Purcell threatened to send his wife to the Louisiana Territory. Eventually, Antonie and his wife were sold to Emanuel Lisa, occasionally a visitor to Vincennes, but usually a resident of St. Louis, part of the Louisiana Territory. They seemed to have voluntarily taken this route rather than leaving their fate in the hands of Purcel. Lisa took the pair to New Orleans where they were sold as slaves to an unidentified master. They then went to the Spanish governor in New Orleans and he released them from their owner. They returned to St. Louis and submitted themselves to Lisa upon his promise not to sell them again. But Lisa became so cruel to them that they escaped to Louisville. Shortly after their arrival in Louisville they were apprehended by Floyd who took them across the

Ohio River into the Indiana Territory. Afterwards they were taken by Floyd to the Jefferson County jail where they were incarcerated. While in jail they filed a complaint against Purcel, Lisa, and Floyd asking that the three of them be enjoined from interfering with their freedom until the court could hear the matter in its entirety. It is likely Floyd as Sheriff of Clark County arrested Antonie under the provisions of the Fugitive Slave Act of 1793. It is interesting to note that William Clark, whose family had been visited by Lisa in Louisville in earlier days, was in Camp Dubois upriver from St. Louis during the winter of 1803-04 on his way west with the Corps of Discovery. Lewis and Clark had purchased supplies and obtained men for the Expedition from Lisa and Lisa had visited Camp Dubois on at least one occasion. Floyd's younger brother, Sgt. Charles Floyd, had been hand picked by Clark as a member of the Expedition and was frequently in charge of the Camp. Lisa may have encountered Davis Floyd in Vincennes, or Clark or Sgt. Floyd may have suggested that Lisa use Sheriff Floyd to recover his escaped slaves. The complaint was eventually granted by the court which meant the pair got their freedom. Floyd may have felt obligated to honor the request by Lisa for help if either Clark or his brother, Sgt. Floyd, had made the referral. The Fugitive Slave Act gave law enforcement officers the power to arrest fugitive slaves and to turn them over to a magistrate. Floyd did not break any laws in doing this. Antonie did claim that Floyd had offered to sell them as slaves in Kentucky. That may have been a jurisdictional claim to ensure that the Kentucky court would hear the case. (Loren Schweningen, *Southern Debate Over Slavery*, Volume 2, "Petitions to Southern County Courts" 1775-1867, University of Illinois Press, 2008, pp. 60-63).

Trends in the First Grade of Government

The issue of whether to allow slavery in the Indiana Territory in contravention of the 1787 Ordinance emerged as the foremost controversy in the brand new

territory. Harrison and his cronies emerged as the advocates for slavery and the Beggs brothers, Wood, and Floyd, all from Clark County, and Badollet from Vincennes emerged as the counter-advocates. During this period in 1802 Gov. Harrison and the Vincennes convention sent a letter and a petition to Congress favoring the temporary suspension of Article 6 of the Ordinance; in 1803 the Clark County men sent Congress a counter-petition opposing the suspension and asking for the removal of the governor; in the same year a Congressional committee headed by a Southerner recommended against altering the 1787 Ordinance; in the same year Gov. Harrison and his two judges adopted a Virginia law allowing voluntary servitude under certain circumstances and slavery under other circumstances; and in 1804 a Congressional committee headed by a northerner played flip-flop and decided to recommend the suspension of the Article 6 for ten years. Badollet expressed his frustrations in Vincennes over these actions and Floyd was sued for delivering husband and wife slaves to the Jefferson County jail in Louisville. There were other political issues in the new territory but slavery was the defining issue.

Books and references relied upon other than those cited in this chapter and the following three chapters

- (1) Jeffrey G. Mauck, *The Floyd Family of Virginia in the Settlement of the Ohio Falls Region and American Westward Migration* prepared for The Carnegie Center for Art and History, New Albany, Indiana, July 2002, pp. 11-18;
- (2) J. P. Dunn, Jr., *Indiana A Redemption from Slavery*, Houghton, Mifflin and Company, The Riverside Press, Cambridge, 1900.
- (3) *National Genealogical Society Quarterly*, "A List of Voters of Clark County Indiana territory 1802," Volume 3, No. 4.
- (4) "Index to Clark County Indiana Territory Census 1807."
- (5) Charles M. Franklin, *Indiana Territorial Pioneer Records 1801-1815*, Heritage House, 1983, p. 15.

- (6) Indiana Historical Society, *Publications*, Volume 2, Jacob Platt Dunn, No. 12., "Slavery Petitions and Papers," The Bowen-Merrill Company, Indianapolis, Indiana 1895.
- (7) Daniel Wait Howe, *The Laws and Courts of Northwest and Indiana Territories*, Indiana Historical Society Publications. Volume II., Number 1, The Bowen-Merrill Company, Indianapolis, Indiana, 1886.
- (8) Francis S. Philbrick, *The Laws of Indiana Territory 1801-1809*, Historical Bureau of the Indiana Library and Historical Department, Indianapolis, Indiana 1931.
- (9) Indiana Historical Collections, Volume XXXII, *Journals of the General Assembly of Indiana Territory 1805-1815*.
- (10) Emma Lou Thornbrough, *The Negro in Indiana before 1900 A Study of a Minority*, Indiana University Press, Bloomington and Indianapolis, Indiana, 1993.
- (11) Clarence Edwin Carter, *The Territorial Papers of the United States*, Volume VII, The Territory of Indiana 1800-1810, United States Printing Office, Washington, D.C., 1939.
- (12) Clarence Edwin Carter, *The Territorial Papers of the United States*, Volume VIII, The Territory of Indiana 1810-1816, United States Government Printing Office, Washington D. C., 1939.
- (13) *The John Tipton Papers*, Volume I 1809-1827, Indiana Historical Collections Volume XXIV

Images:

None.