

Was the Northwest Ordinance a "victory" for abolitionists?

Supporting Questions

1. How does Article 6 of the Northwest Ordinance fit into the context of the debate over slavery prior to its passage?
2. In what ways does Article VI fail to fully resolve the question of slavery?
3. What impact, if any, did the Northwest Ordinance have on the eventual abolition of slavery in the United States?

9-12 Grade Ohio Hub Abolitionism and the Northwest Ordinance Inquiry by Ryan Suskey

| Was the Northwest Ordinance a "victory" for abolitionists? | |
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| Inquiry Standard | Am.Hist. Statement 5: The Northwest Ordinance elaborates on the rights and role of the people in building the foundations of the American nation through its establishment of natural rights and setting up educational institutions. |
| Staging the Compelling Question | The students will view two conflicting passages related to the Northwest Ordinance: Chief Justice Taney's opinion in <i>Strader v. Graham</i> (51 U.S. 82 (1850)) and B. W. Arnett Jr.'s Centennial Oration at the Jubilee of Freedom at the Ohio Centennial. |

| Supporting Question 1 | Supporting Question 2 | Supporting Question 3 |
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| How does Article 6 of the Northwest Ordinance fit into the context of the debate over slavery prior to its passage? | In what ways does Article VI fail to fully resolve the question of slavery? | What impact, if any, did the Northwest Ordinance have on the eventual abolition of slavery in the United States? |
| Formative Performance Task | Formative Performance Task | Formative Performance Task |
| Construct a T-Chart dividing sources (or portions of sources) between the categories of "Anti-Slavery" and "Pro-Slavery." | For each of the sources listed, have students create a 1-2 sentence summary of the weakness(es) of Article VI identified by the source, as it concerns the abolition of slavery. | For each of the examples given in the sources, students will evaluate whether the influence of Article VI was positive (leading to abolition) or negative (slowing/stopping abolition). Then, they should evaluate on a scale of 1-10 how important the contribution was. |
| Featured Sources | Featured Sources | Featured Sources |
| Source A: Ill. Report of the Committee, 1 March 1784 Source B: Land Ordinance of 1784 Source C: Letter of Timothy Pickering to Rufus King, 6 March 1785 Source D: Northwest Ordinance: Article VI (An ordinance for the government of the territory of the United States, North-west of the river Ohio. Source E: Letters of Delegates to Congress: Volume 24 November 6, 1786-February 29, 1788 Nathan Dane to Rufus King Source F: Dr. Cutler and the Ordinance of 1787 p. 253 | Source A: Slavery and Freedom in the Early Republic: Robert Patterson's Slaves in Kentucky and Ohio 1804-1819 Source B: Fugitive Slave Act of 1793 Source C: Fugitive Slave Clause of the United States Constitution Source D: The Negro in Ohio Source E: Resolution of the Vincennes Indiana Convention in November 1802 Source F: Excerpt of "Give Me Liberty" by Eric Foner | Source A: Strader v. Graham (1851) Source B: The Second Founding: How the Civil War and Reconstruction Remade the Constitution Source C: Slavery and the Northwest Ordinance: A Study in Ambiguity |

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| Summative Performance Task | <p>ARGUMENT</p> <p>In a four-minute presentation, using supporting evidence, a panel of 3-5 students will answer as a group whether education should be a fundamental right recognized in the U.S. Constitution. After the four-minute presentation, students will then answer follow up questions for six minutes from a panel of judges that will further inquire into the students' knowledge and comprehension on this topic.</p> |
| | <p>EXTENSION</p> <p>Although attributable to multiple authors, Thomas Jefferson is largely responsible for the majority of the language in the Northwest Ordinance. Based on your study, how does the Ordinance reflect (or not reflect) the legacy of its primary author, Thomas Jefferson?</p> |

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| <p>Taking Informed Action</p> | <p>UNDERSTAND The study of the Northwest Ordinance as a founding document is mandated by S.B. 165 in the State of Ohio.</p> <p>ASSESS Currently, that study is accomplished through Standard 5 of the American History Course. The elaboration for this standard reads: The Northwest Ordinance provided the basis for temporary governance for the Northwest Territory and eventual entry of these states into the United States. The Northwest Ordinance established precedents that included:</p> <ul style="list-style-type: none">● public education (“schools and the means of education”) to be encouraged;● the establishment of civil liberties (e.g., religious liberty, right to trial by jury, writ of habeas corpus);● the prohibition of slavery (later included in the Constitution as the 13th Amendment); and● state governments were to be republican in structure (this provision was repeated in the U.S. Constitution). <p>ACTION Propose to the Department of Education revisions to this standard that you would make to this standard after your study of the Northwest Ordinance. If you believe no revisions are needed, explain why you believe the current standard is sufficient.</p> |
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Inquiry Description

In this inquiry, students will explore the debate surrounding slavery in both the Northwest Ordinance (passed by the Confederation Congress) as well as the United States Constitution. By looking at draft versions of the document, debate surrounding the existence of slavery at the time of the Ordinance, and documents relating to its historical legacy, students will be empowered to decide whether the Northwest Ordinance helped or harmed the cause of abolitionists seeking to end the practice of slavery in the United States.

Structure

This inquiry is composed of three compelling questions, each of which will reflect on an aspect of the Northwest Ordinance (how it fits into the larger picture of abolition, how it failed to address abolition even in its own time, and how it influenced future abolition efforts).

Staging the Compelling Question

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| Compelling Question | Was the Northwest Ordinance a "victory" for abolitionists? |
| Featured Sources | <ul style="list-style-type: none">● Source A: Strader v. Graham (51 U.S. 82 (1850))● Source B: Historical Centennial Oration |

Staging the compelling question

By viewing the two contradicting documents, students will be introduced to the conflict over the impact and legacy of the Northwest Ordinance. Although it clearly states that slavery and the slave trade shall not be permitted within the Northwest Territory, it also contributes (near verbatim) the fugitive slave clause that would later be incorporated into the United States Constitution, and facilitated a compromise that would allow slavery to continue in the United States for almost another century.

Compelling Question

Featured Source A

Strader v. Graham (51 U.S. 82 (1850))

Excerpt

Syllabus

Under the 25th section of the Judiciary Act, this Court has no jurisdiction over the following question, *viz.*,

"Whether slaves who had been permitted by their master to pass occasionally from Kentucky into Ohio acquired thereby a right to freedom after their return to Kentucky?"

The laws of Kentucky alone could decide upon the domestic and social condition of the persons domiciled within its territory, except so far as the powers of the states in this respect are restrained or duties and obligations imposed upon them by the Constitution of the United States.

There is nothing in the Constitution of the United States that can in any degree control the law of Kentucky upon this subject.

The Ordinance of 1787 cannot confer jurisdiction upon this Court. It was itself superseded by the adoption of the Constitution of the United States, which placed all the states of the Union upon a perfect equality, which they would not be if the Ordinance continued to be in force after its adoption.

Source:

51 U.S. 82 (1850)

Compelling Question

Featured Source B

Historical Centennial Oration

Excerpt

What are some of the blessing that come from the ordinance of 1787?

It give[sic] an equality in everything. In the South it was churches and school-houses for the whites, while it was the slave-pen and auction block for the blacks.

The Ohio Territory and State was the highway of freedom and the break-water of slavery...

It was the first field of liberty, Here she plowed, sowed and raised a grand crop of liberty-loving men and women. It was a loyal community; they loved their country, fellowmen and God, and their fellow-men and God loved them.

It was the highway of freedom; for thousands of men would have died in the house of bondage if it had not been for Ohio's underground railroad.

This ordinance give[sic] us unrestricted emigration to the west; there was no barrier thrown in the way, but every encouragement was given to settlers of the country, and free homes were founded and the fires of soul freedom burned in all the States.

Source:

Arnett, Benjamin William, and Daniel Murray Pamphlet Collection. *The Centennial Jubilee of Freedom at Columbus, Ohio, Saturday: orations, poems, and addresses*. Xenia, Ohio: The Aldine Printing House, 1888. Pdf. Retrieved from the Library of Congress,

Supporting Question 1

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| Supporting Question | How does Article 6 of the Northwest Ordinance fit into the context of the debate over slavery prior to its passage? |
| Formative Performance Task | Construct a T-Chart dividing sources (or portions of sources) between the categories of "Anti-Slavery" and "Pro-Slavery." |
| Featured Sources | <ul style="list-style-type: none">● Source A: Ill. Report of the Committee, 1 March 1784● Source B: Land Ordinance of 1784● Source C: Letter of Timothy Pickering to Rufus King, 6 March 1785● Source D: Northwest Ordinance: Article VI (An ordinance for the government of the territory of the United States, North-west of the river Ohio.● Source E: Letters of Delegates to Congress: Volume 24 November 6, 1786-February 29, 1788 Nathan Dane to Rufus King● Source F: Dr. Cutler and the Ordinance of 1787 p. 253 |

In this question, students will explore the history of Article VI (via drafts of prior land ordinances) as well as commentary contemporaneous to the passage of the Northwest Ordinance in the Confederation Congress.

Formative Performance Task

Students will be asked to categorize the sources they read as either being "anti-slavery (i.e. prevents its spread, leads to its abolition, or speaking of it in negative terms) or "pro-slavery" (i.e. allowing its spread, promoting its existence, or describing it in positive terms). Some of the sources *could* fit into both parts of the chart. Others will need to be divided, as one sentence or another could have contrary effect.

Supporting Question 1

Featured Source A

III. Report of the Committee, 1 March 1784

Excerpt

The Committee appointed to prepare a plan for the temporary government of the Western territory have agreed to the following resolutions...

Resolved that the territory ceded or to be ceded by individual states to the United States shall be formed into distinct states, bounded in the following manner as nearly as such cessions will admit...

Provided that both the temporary and permanent governments be established on these principles as their basis... 5. That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said states, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty.

Source:

"III. Report of the Committee, 1 March 1784," *Founders Online*, National Archives, accessed September 29, 2019, <https://founders.archives.gov/documents/jefferson/>. [Original source: *The Papers of Thomas Jefferson*, vol. 6, *21 May 1781–1 March 1784*, ed. Julian P. Boyd. Princeton: Princeton University Press, 1952, pp. 603–607.]

Supporting Question 1

Featured Source B

Land Ordinance of 1784

Excerpt

United States, as is already purchased or shall be purchased of the Indian inhabitants, and offered for sale by Congress, shall be divided into distinct states, in the following manner, as nearly as such cessions will admit;...

Sixth. That their respective governments shall be **deleted:** *in republican forms, and shall admit no person to be a citizen who holds any hereditary title. That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said states, otherwise than in punishment of crimes, whereof the party shall have been convicted the have been personally guilty*] republican.

Bracketed portions were deleted in the final ordinance passed, as recorded in the Journals of the Continental Congress.

Source:

<https://memory.loc.gov/cgi-bin/ampage?collId=ljlc&..>

Supporting Question 1

Featured Source C

Letter of Timothy Pickering to Rufus King, 6 March 1785

Excerpt

Congress made this important declaration "that all men are created equal; that they are endowed by their Creator with certain inalienable rights, and that among these are *life, liberty* and the *pursuit* of happiness," and these truths were held to be self evident. These great truths are echoed through the U.S., nevertheless a proposition for preventing a violation of these truths in a country yet unsettled and from which such violence might easily have been excluded, did not obtain! What pretence (argument there could be none) could be offered for its rejection? I should indeed have objected to the period proposed (the year 1800) for the exclusion of slavery, for the admission of it for a day or an hour ought to have been forbidden. It will be infinitely easier to prevent the Evil at first, than to eradicate or check it at any future time. ...To suffer the continuance of slaves until they can gradually be emancipated in States already overrun with them may be pardonable, because unavoidable without hazarding greater evils; but to introduce them into countries where none now exist, countries which have been talked of--which we have boasted of--as an asylum to the oppressed of the Earth--can never be forgiven.

Source:

The Life and Correspondence of Rufus King Edited by Charles R. King. 6 vols. New York: G. P. Putnam's Sons, 1894--1900.

Supporting Question 1

Featured Source D

Northwest Ordinance: Article VI (An ordinance for the government of the territory of the United States, North-west of the river Ohio.

Excerpt

Article the Sixth. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in 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.

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

DONE by the **UNITED STATES** in **CONGRESS** assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the 12th.

Source:

United States, Charles Thomson, United States Continental Congress, and Continental Congress Broadside Collection. *An ordinance for the government of the territory of the United States, North-west of the river Ohio* [New York: s.n, 1787] Online Text: www.loc.gov/item/90898154

Supporting Question 1

Featured Source E

Letters of Delegates to Congress: Volume 24 November 6, 1786-February 29, 1788 Nathan Dane to Rufus King

Excerpt

Dear Sir New York July 16. 1787.

I am obliged to you for yours of the 11th inst. With pleasure I communicate to you what we are doing in Congress---;not so much from a consciousness that what we do is well done, as from a desire that you may be acquainted with our proceedings.

We have been much engaged in business for ten or twelve days past for a part of which we have had 8 States...When I drew the ordinance which passed (in a few words excepted) as I originally formed it, I had no idea the States would agree to the sixth Art. prohibiting Slavery---;as only Massa. of the Eastern States was present---;and therefore omitted it in the draft---;but finding the House favourably disposed on this subject, after we had completed the other parts I moved the art---;which was agreed to without opposition.

Source:

Smith, Paul H., et al., eds. *Letters of Delegates to Congress, 1774-1789* 25 volumes, Washington, D.C.: Library of Congress, 1976-2000) Vol. 24 pp. 357-358

Supporting Question 1

Featured Source F

Dr. Cutler and the Ordinance of 1787 p. 253

Excerpt

The South really had but little interest in the slavery question as applied to this [The Northwest] territory. It had more land than it could occupy; and Southerners probably never conceived the possibility of their needing land or votes north of the Ohio River.

The chief motive of the Southern members in voting unanimously for the Ordinance was doubtless to relieve the financial embarrassment of the government, and to bring the public lands into the market at the highest price.* It must also be borne in mind that there was then, and for the next five years, more antislavery sentiment in the South than ever existed there before or since. Mr. Jefferson, Patrick Henry, George Mason, George Wythe, St. George Tucker, and other prominent men of Virginia, were theoretically pronounced abolitionists. In these years there were State abolition societies in Virginia, Maryland, and Delaware, which held regular meetings, and developed more radical opinions as to the rights of man, and the civil and social equality of the negro, than Phillips or Garrison ever uttered. There were ten of these abolition societies in the Southern States during that period. Slavery had not then become a political and sectional issue.

Source:

Poole, William Frederick, and Daniel Murray Pamphlet Collection. *Dr. Cutler and the Ordinance of* [Boston: O. Everett, 1876] Pdf. <https://www.loc.gov/item/91898582/>.

Supporting Question 2

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| Supporting Question | In what ways does Article VI fail to fully resolve the question of slavery? |
| Formative Performance Task | For each of the sources listed, have students create a 1-2 sentence summary of the weakness(es) of Article VI identified by the source, as it concerns the abolition of slavery. |
| Featured Sources | <ul style="list-style-type: none">● Source A: Slavery and Freedom in the Early Republic: Robert Patterson's Slaves in Kentucky and Ohio 1804-1819● Source B: Fugitive Slave Act of 1793● Source C: Fugitive Slave Clause of the United States Constitution● Source D: The Negro in Ohio● Source E: Resolution of the Vincennes Indiana Convention in November 1802● Source F: Excerpt of "Give Me Liberty" by Eric Foner |

In this question, students will grapple with the continued existence of slavery, despite Article VI, both in the Northwest Territory and in other parts of the United States.

Formative Performance Task

By reading each source, students should draw the connection between the continued existence of slavery in the Northwest Territory, despite the prohibitions on slavery described in the Ordinance. In some instances, the source will directly refer to the Ordinance. In others, the connection will be more abstract/thematic.

Supporting Question 2

Featured Source A

Slavery and Freedom in the Early Republic: Robert Patterson's Slaves in Kentucky and Ohio 1804-1819

Excerpt

The Ohio River served as the powerful, if symbolic, dividing line between slavery and freedom, yet that unmistakable natural feature, so neatly drawn as a line on a map and imbedded in the imaginations of generations of slaves and freemen, also united the Valley, its people, and its attitudes. Slavery and other forms of involuntary servitude had existed on both sides of the river since the first European settlements. Slaves brought by French traders and settlers remained in the North-west Territory when it was created in 1787, and despite the declaration in the Northwest Ordinance that “forbade slavery forever” north of the Ohio River, the territorial government made little effort to manumit them. Tolerated as well were the slaves that Virginia and Kentucky settlers brought across the river, often under the guise of indentured servants or coerced in other ways. Considerable sympathy for slavery was well entrenched in Ohio, Indiana, and Illinois when these three states were carved out of the Northwest Territory between 1803 and 1818. Efforts to legalize slavery failed by close margins in each of the states’ constitutional conventions, but all three states subsequently enacted statutes that consciously created gradations in status between slavery and freedom. They legalized indentured servitude, stripped free blacks of many civil rights, and allowed slaves in transit to remain in their states for up to a year. The Fugitive Slave Act of 1793 also made it clear that slaves who crossed the river did not become free persons just because they entered the domain of a nominally free state.

Source:

E. Pocock, *Slavery and Freedom in the Early Republic: Robert Patterson's Slaves in Kentucky and Ohio, 1804-1819*, Ohio Valley History, vol. 6, issue 1 (2006)

Supporting Question 2

Featured Source B

Fugitive Slave Act of 1793

Excerpt

SEC. 3. And be it also enacted, That when a person held to labor in any of the United States, or in either of the Territories on the Northwest or South of the Ohio river, under the laws thereof, shall escape into any other part of the said States or Territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any Judge of the Circuit or District Courts of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such Judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or Territory, that the person so seized or arrested, doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such Judge or magistrate to give a certificate thereof to such claimant, his agent, or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the State or Territory from which he or she fled.

SEC. four. And be it further enacted, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent, or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested pursuant to the authority herein given and declared; or shall harbor or conceal such person after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any Court proper to try the same, saving moreover to the person claiming such labor or service his right of action for or on account of the said injuries, or either of them.

Source:

1 Stat. 302 (Chapter 7)

Supporting Question 2

Featured Source C

Fugitive Slave Clause of the United States Constitution

Excerpt

No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labour may be due.

Source:

United States Constitution, Article IV, Section 2, Clause 3 (1787).

Supporting Question 2

Featured Source D

The Negro in Ohio

Excerpt

On the credit side of the ledger, it should be pointed out that Ohio has an anti-slavery tradition, a heritage of the Ordinance of 1787. Some orators have enjoyed playing upon the moral string, that the founding fathers were a kind and humane group who were anguished by the slavery evil. There is no desire here to detract from those who held moral opposition to slavery. The truth is, nevertheless, that economic and political considerations also dictated the anti-slavery provision in the resolutions which provided colonial government for the Northwest Territory. Five of the eight states whose delegates passed the Ordinance of 1787 were of the South. William Grayson, of Virginia, acting President of Congress, explained to James Monroe that "the clause respecting slavery was agreed to by the southern members for the purpose of preventing tobacco and indigo being made on the northwest side of the Ohio, as well as for other political reasons." Many of the Southerners felt certain that it would be advantageous to their section to have a monopoly on cheap labor. In general, the followers of Thomas Jefferson subscribed to his anti-slavery policy for the Old Northwest with no implied intention of recognizing any equalities on the part of the Negro.

The anti-slavery clause of the Ordinance, while a step toward the ultimate emancipation of the Negro in the United States, in itself was productive of conflicts and problems. In the first place, its promise attracted to the Ohio region people, like the New Englanders and the Quakers, morally opposed to slavery and sympathetic toward equality. In the second place, that promise attracted many more who were not only opposed to slavery but to the presence of Negroes as well. In the third place, the promise of freedom attracted free Negroes, manumitted slaves, and fugitives. Here lay the seeds of conflict, between factions of white men over the right of the Negro to come into Ohio, the democratic ideal of equality, and the Christian ideal of brotherhood.

Source:

Rodabaugh, James H. "The Negro in Ohio." *The Journal of Negro History* 31, no. 1 (January 1946): 12-13.

Supporting Question 2

Featured Source E

Resolution of the Vincennes Indiana Convention in November 1802

Excerpt

The first and second territorial legislatures [of the Indiana territory] adopted several indenture laws which made it possible to circumvent Article VI of the Ordinance of 1787. The first was enacted on August 15, 1805, and dealt with the apprenticeship of whites.

On August 26, 1805, the second was enacted by which the real circumvention of Article VI was made possible. It was made legal to bring into the territory "negroes or mulattoes of and above the age of fifteen years, and owing service and labors as slaves."

On December 3, 1806, the second session of the territorial legislature adopted an act providing for the punishment of slaves for leaving their homes or for "riots, routs, un lawful assemblies, trespasses and seditious speeches." Punishment for harbouring of runaway slaves was also provided. This indenture law was incorporated with the first indenture law of 1805 into a fourth in 1807. In 1808, another act was passed by which punishment was provided for those who entertained or helped in any way a slave without the written permission from the master...

...there was still the indenture law of 1805 under which it was possible to circumvent Article VI. Under this indenture law, contracts between the master and slaves were made. An example follows:

CONTRACT

Be it remembered that on the twenty-eighth day of November, one thousand eight hundred and five before me, Robert Bentlin, Clerk of the Court of Common Pleas of the County of Knox in the Indiana Territory, personally came Eli Hawkins of the said county and negro lad of the age of sixteen years being a slave named Jacob belonging to the said Eli Hawkins and by him brought into this Territory from the State of South Carolina, which said Hawkins and the said Jacob in pursuance of a law of the Territory in that case made and provided—Determined and agreed among themselves in my presence in manner of following that is to say, that the said Jacob shall and will serve the said Eli Hawkins and his assigns for the term of Ninety years from the day of the date hereof, he, the said Eli Hawkins and his assigns providing the said Jacob with necessary and sufficient provisions—and clothing, washing and lodging, according to his degrees and station. From and after the expiration of said term the said Jacob shall be free to all interests and purposes—and the said Eli Hawkins into a Bond with sufficient surety conditioned that the said Jacob shall not after the expiration of his time, become a county charge.—Signed and acknowledged in my presence the day and year first above written.—

Source:

Owen, Daniel. "Circumvention of Article VI of the Ordinance of 1787." *Indiana Magazine of History* 36, no. 2 (June 1940): 110-16.

Supporting Question 2

Featured Source F

Excerpt of "Give Me Liberty" by Eric Foner

Excerpt

The Fugitive Slave Clause accorded slave laws "extraterritoriality" --that is; the condition of bondage remained attached to a person even if he or she escaped to a state where slavery had been abolished. John Jay, while serving in Spain on a diplomatic mission, once wrote of how he missed the "free air" of America. Jay was probably unaware of the phrase's full implications. In the famous *Somerset* case of 1772, the lawyer for a West Indian slave brought to Britain had obtained his client's freedom by invoking the memorable words, "the air of England is too pure for a slave to breathe" (that is, the moment any person sets foot on British soil, he or she becomes free). Yet the new federal Constitution required all the states, North and South, to recognize and help police the institution of slavery. For slaves, there was no "free air" in America.

Source:

Foner, Eric. *Give Me Liberty!: an American History*. New York: W.W. Norton, 2013, p. 271.

Supporting Question 3

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| Supporting Question | What impact, if any, did the Northwest Ordinance have on the eventual abolition of slavery in the United States? |
| Formative Performance Task | For each of the examples given in the sources, students will evaluate whether the influence of Article VI was positive (leading to abolition) or negative (slowing/stopping abolition). Then, they should evaluate on a scale of 1-10 how important the contribution was. |
| Featured Sources | <ul style="list-style-type: none">● Source A: Strader v. Graham (1851)● Source B: The Second Founding: How the Civil War and Reconstruction Remade the Constitution● Source C: Slavery and the Northwest Ordinance: A Study in Ambiguity |

This question asks students to consider the contributions of the Northwest Ordinance to the eventual abolition of slavery in the United States.

Formative Performance Task

This task asks students to trace the impact of Article VI on future abolitionist or anti-abolitionist efforts in the United States.

Supporting Question 3

Featured Source A

Strader v. Graham (1851)

Excerpt

Under the 25th section of the Judiciary Act, this Court has no jurisdiction over the following question, *viz.*,

"Whether slaves who had been permitted by their master to pass occasionally from Kentucky into Ohio acquired thereby a right to freedom after their return to Kentucky?"

The laws of Kentucky alone could decide upon the domestic and social condition of the persons domiciled within its territory, except so far as the powers of the states in this respect are restrained or duties and obligations imposed upon them by the Constitution of the United States.

There is nothing in the Constitution of the United States that can in any degree control the law of Kentucky upon this subject.

The Ordinance of 1787 cannot confer jurisdiction upon this Court. It was itself superseded by the adoption of the Constitution of the United States, which placed all the states of the Union upon a perfect equality, which they would not be if the Ordinance continued to be in force after its adoption.

Such of the provisions of the Ordinance as are yet in force owed their validity to acts of Congress passed under the present Constitution, during the territorial government of the Northwest territory, and since to the constitutions and laws of the states formed in it.

Source:

Strader v. Graham, 51 U.S. 82 (1851).

Supporting Question 3

Featured Source B

The Second Founding: How the Civil War and Reconstruction Remade the Constitution

Excerpt

As soon as the Thirty-eighth Congress convened in December 1863, plans for amending the Constitution began to circulate. Representative James M. Ashley, a longtime activist in the antislavery movement in Ohio, introduced the first such proposal on December 14. ...

The final wording, modeled on the Northwest Ordinance, of 1787, which prohibited slavery in the territories north of the Ohio River, was hammered out in the Senate Judiciary Committee, headed by Senator Lyman Trumbull of Illinois: "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Thus, in the act of abolition, the amendment for the first time introduced the word "slavery" into the Constitution. ...

When he presented the Amendment to the Senate, Trumbull pointed out that while various acts of Congress and the Emancipation Proclamation had freed many slaves, they had not destroyed slavery's legal foundations. Trumbull rejected the idea, espoused by Sumner and other Radicals, that the war power itself, or the Constitution's clause guaranteeing each state a power to abolish slavery by statute and that it should do so immediately rather than going through the cumbersome amendment process. "I am as anxious to get rid of slavery as any person," Trumbull declared, but "it has been an admitted axiom from the foundation of this government, among all parties, that Congress had no authority to interfere with slavery in the states where it existed." ...

Senator Jacob Howard of Michigan also urged Sumner to "dismiss all reference to French constitutions or French codes" [which had abolished slavery] "and go back to ...good old Anglo-Saxon language employed by our fathers in the ordinance of 1787." The wording of the Northwest Ordinance he added, was familiar and "well understood" by the people of the United States. It was particularly appealing to the Republicans because during the 1850s they had frequently cited the ordinance's prohibition of slavery in the Old Northwest as evidence of the founders' supposed hostility to slavery.

Source:

Foner, Eric. *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* New York, NY: W.W. Norton & Company, Inc., 2019, pp. 29-30.

Supporting Question 3

Featured Source C

Slavery and the Northwest Ordinance: A Study in Ambiguity

Excerpt

In spite of the praise that Article VI received in the nineteenth century, recent scholars have, for the most part, ignored it. Although Ulrich B. Phillips described it as "the first and last antislavery achievement by the central government" in this period, a careful examination of the provisions and its implementation suggests that it is exactly what the article was intended to accomplish. At the time of its passage the ordinance did not threaten slavery in the South. It may even have strengthened slavery there. Nor did the ordinance immediately or directly affect slavery in the territory north of River. Slavery continued in the region for decades. Thus in the nineteenth century usage of the term, the ordinance was not abolitionist and was only barely "antislavery."

Certainly it is unlikely that all those who voted for the Ordinance saw the provision as antislavery. The congressmen from the Deep South who voted for it were not consciously undermining slavery. On the contrary, some of the slaveholders who voted for the legislation may have believed that Article VI actually strengthened slavery. The fact that the ordinance was specifically limited to the Ohio seemed to imply that the territories south of the river were open to slavery. This assumption was strengthened by the fact that an attempt in 1784 to prohibit slavery in *all* the western territories after the year 1800 had been defeated. Furthermore, the ordinance's fugitive slave clause offered protection to the slaveowners whose property might escape into the territory. Since the Articles of Confederation contained no such protection, and the Constitutional Convention had not yet added a similar clause to the proposed new compact, this was an important victory for slavery.

[FOOTNOTE 4.: The fugitive slave clause of the ordinance was the first important protection given to slavery by the national government. The Constitutional Convention did not consider a fugitive slave provision until August 28, a month and a half after the ordinance provided such protection for slaveowners. It is likely that the South Carolinians at the convention who demanded this clause got the idea for such a clause from the ordinance. Max Farrand, ed., The Records of the Federal Convention of 1787 (4 vols., New Haven 1911), II, 443, 453-454. The vigorous defense of slavery by the Deep South delegates at the constitutional convention stands in contrast to the adoption of Article VI of the ordinance, if that article is seen as "antislavery." It is likely, however, that the Deep South delegates in Congress thought Article VI would protect slavery where it was and allow it to spread to the Southwest. Thus, they may have seen the article as proslavery, or at least protective of slavery.]

While the ordinance gave support to slavery in the South, it did not destroy slavery north of the Ohio. Article VI was not an emancipation proclamation for the Northwest. No slaves were freed immediately because of the ordinance. Neither it nor the state constitutions of the free states in the Northwest led to an immediate end to slavery throughout the area.

In the long run, of course, Article VI helped set the stage for the emergence of five free states in the region. By discouraging slaveowners from moving into the region, the ordinance helped create a white majority in the Northwest that was hostile to slavery. This proved especially crucial in Illinois, where the attempt to amend the Illinois Constitution of 1818 to allow slavery was barely defeated. Yet, even after defeat of the proslavery forces, slavery lingered in Illinois for nearly thirty years. Slavery lingered so long in the Northwest at least in part because the ordinance itself was ambiguous, internally inconsistent, and written by men who were uncertain of their own objectives.

Source:

Finkelman, Paul. "Slavery and the Northwest Ordinance: A Study in Ambiguity." *Journal of the Early Republic* 6, no. 4 (1986): 343-70. <https://doi.org/10.2307/3122644>.

Summative Performance Task

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| Compelling Question | Was the Northwest Ordinance a "victory" for abolitionists? |
| Argument | In a four-minute presentation, using supporting evidence, a panel of 3-5 students will answer as a group whether education should be a fundamental right recognized in the U.S. Constitution. After the four-minute presentation, students will then answer follow up questions for six minutes from a panel of judges that will further inquire into the students' knowledge and comprehension on this topic. |
| Extension | Although attributable to multiple authors, Thomas Jefferson is largely responsible for the majority of the language in the Northwest Ordinance. Based on your study, how does the Ordinance reflect (or not reflect) the legacy of its primary author, Thomas Jefferson? |

Argument

This argument task takes the form of the authentic assessment that is embedded in the *We the People* National Program. The students play the role of experts testifying before a panel of legislators. The task should be completed by the students in groups of 3-5, so that the students learn collaborative problem solving and the process of incorporating colleague's ideas into their own work.

Extension

This extension carries the main thrust of this inquiry to consider not only the legacy of the Northwest Ordinance, but also the legacy of its primary author--Thomas Jefferson. Jefferson's legacy on slavery is contentious, given his ownership of slaves and relationship with the Hemmings family in particular. However, numerous documents from his life (including the Northwest Ordinance) express concern over the continued existence of slavery in the United States. Students are asked to grapple with this legacy, and situate their studies in their understanding of an important figure in American history and governance.

Taking Informed Action

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| Understand | The study of the Northwest Ordinance as a founding document is mandated by S.B. 165 in the State of Ohio. |
| Assess | <p>Currently, that study is accomplished through Standard 5 of the American History Course. The elaboration for this standard reads: The Northwest Ordinance provided the basis for temporary governance for the Northwest Territory and eventual entry of these states into the United States. The Northwest Ordinance established precedents that included:</p> <ul style="list-style-type: none"> ● public education (“schools and the means of education”) to be encouraged; ● the establishment of civil liberties (e.g., religious liberty, right to trial by jury, writ of habeas corpus); ● the prohibition of slavery (later included in the Constitution as the 13th Amendment); and ● state governments were to be republican in structure (this provision was repeated in the U.S. Constitution). |
| Action | Propose to the Department of Education revisions to this standard that you would make to this standard after your study of the Northwest Ordinance. If you believe no revisions are needed, explain why you believe the current standard is sufficient. |

Students are tasked with considering whether the current study of the Northwest Ordinance in American History courses is sufficient to gain understanding. Proposed revisions can remain in house, or they can be sent to the Department of Education via the public comment periods allowed in standards revisions.

