

GOODMAN

The Black Codes, 1865-1867

History

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THE BLACK CODES, 1865-1867

BY

BYNE FRANCES GOODMAN

THESIS

SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE

DEGREE OF
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IN

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THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

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ENTITLED The Black Codes, 1865-1867,

IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE

DEGREE OF Bachelor of Arts with Honors in
History

H. S. Robertson

Instructor in Charge

APPROVED:

Gay Clinton Ford

Hiting

HEAD OF DEPARTMENT OF

History

TABLE OF CONTENTS

	Page
Introduction - - - - -	1
The Codes - - - - -	10
Opposition To Codes - - - - -	44
Conclusion - - - - -	51
Bibliography	
Sources - - - - -	59
Secondary Material - - - - -	61

CHAPTER I

Introduction

Slavery as a legal institution came to an end in the United States on the eighteenth of December, eighteen hundred and sixty-five, when Secretary Seward formally announced that the thirteenth amendment had been properly ratified by the necessary number of states, and was therefore regularly in force.(1) The constitutional provision, that two-fifths of the slave population should be counted when the number of representatives in Congress should be determined, was no longer effective, for the entire colored populace must now be considered. The fact that the entire South would be entitled to an increase of membership in the national House of Representatives was a bitter proposition to the northerners, and from the beginning of the session the thirty-ninth Congress did little but discuss schemes for changing the basis of apportionment. Many theories were advanced as to the comparative status of the rebellious states; but the one finding the most favor was that the resistance of the South to the constitution and the laws of the Union, had deprived them of the privilege of enjoying all federal law; Congress could, therefore, reconstruct these states as it pleased, and place upon them whatever restrictions it deemed proper.

1.Dunning, Reconstruction, 53.

The first step taken was in February, 1866, when an attempt was made to extend the existence of the Freedmen's Bureau Act, which had been passed in March, 1865. As originally enacted, the law provided for the establishment of a bureau which was intended to organize the various systems for the regulation of negroes which had developed during the war. This bureau was to have charge of all matters relating to refugees and freedmen in the states which had been the theatre of war. The officials were very active, and after the war was over their authority became very conspicuous in helping to adjust social conditions; by giving aid to the vast numbers of liberated slaves in securing means of livelihood, and in protecting them in their privileges against local discriminations. When the bill for enlarging the powers of the bureau was submitted to the president, he vetoed the measure because the southern states had not been represented in Congress. Following the policy of Lincoln, President Johnson had undertaken to restore civil government in the South. During the recess of Congress there had been nothing to prevent him from carrying out his own plan of reconstruction. On May 29th, 1865, he issued a proclamation granting amnesty to certain classes and providing for the establishment of temporary governments in the late insurrectionary states.(1) These governments were known as the Johnsonian governments, and under them a certain degree of order was maintained. Con-

1. Richardson, Messages and Papers, VI, 310-312.

tions met to draw up new constitutions; legislatures were assembled and representatives to Congress elected. By August, 1866, the provisional governors had been relieved of their offices, and the president proclaimed the restoration of peace, order, tranquility, and civil authority throughout the whole United States.(1)

The action of the president met with violent denunciation in Congress, as being unconstitutional and infringing upon the rights of the legislative department; the southern senators and representatives were promptly refused admittance. To retain his dignity the only way open to the chief executive was to refrain from recognizing the new Congress. An effort was made to pass the Freedmen's Bureau Act over his veto, but it failed of the necessary majority. In March a Civil Rights Bill was passed, which declared that all persons born in the United States and subject to the jurisdiction thereof were citizens of the United States. The president vetoed this act also, as being both unwise and unconstitutional. This time the majority necessary to pass the bill over the veto was secured, and Congress plunged madly ahead to complete its notorious programme of reconstruction. The fourteenth amendment, the extension of the freedmen's bureau, the reconstruction acts, the fifteenth amendment, and the enforcement acts, followed in quick succession, with the final recognition of all the states in January, 1871.(2)

1. Richardson, Messages and Papers, VI, 434-438.

2. Rhodes, U.S., V, 595-605, VI, 2-49, 60-64, 173-178, 293-330.

During the interval which elapsed between the restoration of civil government by President Johnson and the beginning of congressional reconstruction, however, the legislatures of the South were unrestrained, and it was then that the so-called 'Black Codes' were enacted. A study of the conditions in the South at the time is essential for an intelligent comprehension of these laws, and for an appreciation of their significance as a political, social and economic movement.

Industrial organization had perished with the destruction of the slavery system and the ravages of the war. Capital had suffered with the loss in value of the Confederate and state securities; factories had been burned; and commerce was practically destroyed. Many political institutions had declined; the governments were, on the whole, corrupt and under the control of incompetent officials. The greatest problem, however, was the race question. The old slave codes were obsolete, the few laws in existence pertaining to free negroes did not meet the new conditions. In Virginia, according to the report of the Joint Committee on Reconstruction which defined the rights of the free negro as they existed before the war, the free black had the same rights to sue and to be sued as the white man, and his cases were tried in the same way; he had the same right to call witnesses; and the same right to acquire property, except in slaves.(1) How true these conditions were in gener-

1.Fleming, Doc.His., I,268.

al throughout the South, it is impossible to say; but even though they were typical of the other states, there was still much to be done in the way of legislation. It was necessary to make new laws which would recognize the transition of the negro from slavery to citizenship, and to entrust him with those privileges and responsibilities which belong to him as a member of a commonwealth. The state must give him the right to make contracts for his labor, and to be protected in his person and property. Furthermore, it was necessary to regulate the family life, as well as to control the morals and conduct of these new citizens; to induce them to cease roving, to secure homes, to earn a livelihood, to fulfill their contracts, and to support their families. The state must in addition provide for the education of the freedmen, care for the aged and helpless, and provide for the orphans. It was also necessary to secure protection for the whites in person and property against the lawless blacks.(1)

The negroes had conceived peculiar ideas regarding their freedom; they believed it to be the embodiment of wealth, idleness, and governmental bounty. They tested this new condition by manifesting a general demoralization and a desire to secure a living from the country without giving anything in return. The white people became alarmed and greatly feared an insurrection or race war.(2) The independent attitude of irresponsibility assumed by the negroes was perhaps encouraged by the unscrupulous members of the

1.Fleming, Doc.His., I,243.

2.Fleming, Recon.in Ala., 378.

Freedmen's Bureau. Not all the officers of the bureau were of this type, for some of them were very efficient; except for their aid, thousands of freedmen and refugees would doubtless have died from starvation. Also they held the position of advisors and instructors to the blacks, and urged them to make contracts for labor with the planters.(1)

That there were corrupt members, however, there can be no doubt. They at least seem to have been responsible for the rumor that the estates of the confederates were to be divided among the negroes during the Christmas holidays; each negro was to be given forty acres and a mule. Many of the freedmen were also told that they should not remain with their old masters, since their freedom was not secure as long as they did so. Consequently the negroes wandered idly around the country, collected in towns, or flocked to the Union camps, leaving the plantations and crops to their fate. The number of vagrants was appalling, and acts of violence were common. If a planter was so fortunate as to secure laborers to work in his fields he had no assurance that they would stay until the harvest, for the obligation of contract rested lightly upon the conscience of the black man. Great numbers of freedmen managed to exist by stealing the supplies of the planters and selling them to unprincipled persons who lived by trading these stolen goods. Many negroes, particularly the young men, on being assured of their freedom, not only refused to work but became very offensive in manner and assumed what

1. Truman, Report on South, 12.



the white people called "airs", and "then as now, among things intolerable to a southern white man a 'sassy nigger' held a curious pre-eminence".(1) There were many of the freed slaves, however, whom emancipation scarcely affected for some time; this was particularly true of the house servants, and of those living in remote districts where the bureau for freedmen was not established. Also many others after having thoroughly demonstrated their freedom, voluntarily returned tired and weary to their deserted homes and settled down in their old quarters. It was not so much love for their former masters that induced them to come back, as an inborn fondness on the part of the negro for associations; he is usually loathe to forsake the environment and home in which he has been reared.(2)

The best friends that the freedmen had were the former slave-owners although neither of them always appreciated it. Their worst enemies were the so-called "poor whites"; and the usual friction between this class and the negroes, was now roused into open violence. The whites were jealous of their authority; moreover, they saw in the free negroes a serious rival laboring class and felt that their social position was threatened. Violent encounters between the races occurred; it is safe to say that the whites were frequently the aggressors and sometimes exposed the negro to nameless persecutions.(3)

1. Woolley, Recon. in Ga., 17.
2. Truman, Report on South, 9.
3. Ibid, 10.

The legislatures, called together under the Johnson reconstruction regime, were for the most part composed of small planters; few of the worthy members of the convention having been chosen for seats in it.(1) The time was not favorable to calm and deliberate legislation; immediate and effective measures were needed to check the idleness and immorality of the negroes and to compel them to work. These legislatures had before them a task requiring the most extreme delicacy of treatment; it was necessary to provide for the political and legal status of four millions of people just out of slavery.(2) The action of the law-makers was one which vitally affected every person in the South, and which was also watched with the keenest interest and distrust by the North. The life of the Johnsonian governments was at stake; would the southerners realize and respect the northern feeling in regard to the negroes, or would they draw the color line sharply and deny to the black man rights and privileges which belonged to him as a freeman? (3)

The southern point of view is well summarized by the Major-General of the Confederacy, Judge Henry Clayton, in an address to the grand jury of Pike County, Alabama, in the year 1866, in which he says: "To remedy the evils growing out of the abolition of slavery it seems two things are necessary: first, a recognition of the freedom of the race as a fact, the enactment of just and humane laws, and the

1.Garner, Recon.in Miss., 118.

2.Stephenson, Discrim.in Am.Law, 35.

3.Chadsey, Struggle between Johnson and Cong., 43-44.

willing enforcement of them; secondly, by treating them with perfect fairness and justice in our contracts, and in every way in which we may be brought in contact with them. By the first we convince the world of our good faith, and get rid of the system of espionage (Freedmen's Bureau), by removing the pretext for its necessity; and by the second, we secure the services of the negroes, teach them their places and how to keep them, and convince them at least that we are their best friends... We need the labor of the negro all over the country, and it is worth the effort to secure it... Besides all this...do we owe the negro any grudge? What has he himself done to provoke our hostility? Shall we be angry with him because his freedom has been forced upon him?... He may have been the companion of your boyhood...you may be bound to him by a thousand ties which only a southern man knows, and which he alone can feel in all its force. It may be that when, only a few years ago...you went to meet the invaders of your country, you committed to his care your home and your loved ones; and when you were far away upon the weary march...many and many a time you thought of that faithful old negro, and your heart warmed toward him."(1)

1.Fleming, Doc.His., I,269-271.

CHAPTER II

The Codes

MISSISSIPPI

Mississippi was the first state to undertake legislation intended to meet the new industrial conditions in the South, and through her experiments provoked the wrath of her suspicious northern spectators. A special committee was appointed by the constitutional convention of the state, which met in the fall of the year 1865, with instructions to investigate the new problems and to prepare such statutes as they might deem necessary to provide for the general welfare. In giving its report the committee declared that it had labored "earnestly to secure justice, employment, labor, income, reward, home, comfort, serenity, health, sobriety, good morals, and protection to person and property".(1) It accordingly recommended a series of measures which it considered expedient and proper. These laws were passed by the state legislature between the twenty-first and the twenty-ninth of November of the same year.

Civil
Rights
Bill

In brief, negroes were given the right to sue and to be sued, to hold and to transfer property, to intermarry among themselves but not to marry white persons, and to act as witnesses in court when a negro was a party to the suit. It was expressly provided, however, that the provisions

1.Quoted from Garner, Recon.in Miss., 113.

of the statute were not to be so construed as to allow any freedman or free negro the right to rent or lease any lands or tenements, except in incorporated towns or cities. The same statute also required every freedman to have on January 1, 1866, written evidence of a lawful home and employment. If he were under some written contract for service the evidence of such a contract was sufficient; if he were not bound by such a contract, however, he must have a license from the mayor authorizing him to do irregular job work.(1)

Apprentice
Law Sheriffs, justices of the peace, and other civil officers of the county were to report to the probate court semi-annually, in January and July, the names of all freedmen under the age of eighteen, who were orphans or whose parents were unable or unwilling to support them. It was the duty of the court, thereupon, to order the apprenticing of such minors, preference being given to their former masters if they were suitable persons. The master must furnish bond payable to the state, conditioned upon furnishing the minor with sufficient food and clothing, treating him humanely, giving him medical attention when sick, and if the minor were under fifteen years of age, teaching him or having him taught to read and write. Males were to be bound out until they were twenty-one and females until they were eighteen years of age. The master could inflict moderate corporal punishment as a father or guardian might do, but in no case

was the punishment to be cruel or inhuman.(1)

If the apprentice ran away, the master was allowed to pursue him and to bring him before a justice of the peace who could remand him to the service of the master; if he had good cause for leaving the court might discharge him and enter judgment against the master for an amount not exceeding one hundred dollars to be paid to the apprentice. Anyone enticing an apprentice away from his master, knowingly employing him, furnishing him food or clothing, or giving him liquor without his master's consent, was guilty of a high misdemeanor. If the master wished to get rid of the apprentice, he might go before the probate court, which would cancel his bond and re-apprentice the minor. If the master died the court would give the preference to the widow or family of the deceased in re-apprenticing the minor. In cases where the age of the freedman could not be ascertained, the court was to fix it.(2)

Vagrancy
Law

All freedmen, found on the second Monday in January, 1866, or thereafter, with no lawful employment or business, or found unlawfully assembling together, and all white persons so assembling with freedmen, were to be deemed vagrants. All vagrants, upon conviction, were to be fined not exceeding one hundred dollars and costs, and to be imprisoned, at the discretion of the court, not exceeding ten days. All fines and forfeitures collected under the provisions of this act were to be paid into the county treasury for gen-

1.Fleming, Doc.His., I,282.

2.Stephenson, Discrim.in Am.Law. 55.

eral county purposes. In case any freedman should fail for five days after the imposition of the fine to pay the same, the sheriff was to hire out said freedman to any person who would, for the shortest period of service, pay said fine and forfeiture and all costs; provided, a preference should be given to the employer, if there was one, in which case the employer should be entitled to deduct and retain the amount so paid from the wages of such freedman.

The same duties and liabilities existing among white persons of the state should attach to freedmen, to support their indigent families and all colored paupers. The law levied a tax of one dollar upon every freedman between the ages of eighteen and sixty to go into the freedmen's pauper fund. If a negro refused to pay the tax, he might be arrested and hired out until he had paid the amount.(1)

Penal
Code

Any freedman not in the military service of the United States nor having a specified license, who should keep or carry firearms of any kind, or any ammunition, dirk or bowie-knife, should be punished by a fine of not over ten dollars, and all such arms, etc., should be forfeited to the informer.

For a white man to sell, give, or lend a negro any intoxicating liquors (except that a master might give him spirituous liquors if not in sufficient quantities to produce intoxication), was made an offence, punishable by a fine of not than fifty dollars or imprisonment for not more

1.Fleming, Doc.His.,I,284-286.

than thirty days.

Any freedman guilty of riots, affrays, trespasses, malicious mischief, cruel treatment to animals, insulting gestures, language or acts, or assaults on any person, disturbance of the peace, exercising the function of a minister of the gospel without a license from a regularly organized church, selling intoxicating liquors, or committing any other misdemeanor the punishment of which was not specifically provided by law, upon conviction was to be fined not less than ten dollars nor more than one hundred dollars, and imprisoned at the discretion of the court, not more than thirty days.(1)

Any officer or employe of any railroad in the state allowing any negro to ride in any first class passenger car, was made liable to a fine of not less than fifty dollars nor more than five hundred dollars, and to imprisonment until such fine and costs of prosecution were paid; provided, that this section should not apply in the case of negroes traveling with their mistresses in the capacity of maids.(2)

In view of the criticism that such legislation would undoubtedly provoke in the North, the Mississippi legislature should not have countenanced such extreme laws. Many northern newspapers printed the acts entire and the editors commented freely upon them. It was said that a practical re-enslavement of the negro was intended, for such laws

1.Fleming, Doc.His., I,289-290.

2.Ibid, 281-282.

applied to negroes alone. Only the black man was required to have a home within a certain time; the vagrancy law also applied to none other; furthermore, the negro was deprived of trial by jury. An editorial from the Chicago Tribune for December 1, 1865, will serve to show the general trend of the opposition: "We tell the white men of Mississippi that the men of the North will convert the state of Mississippi into a frog pond, before they will allow any such laws to disgrace one foot of soil in which the bones of our fathers sleep and over which the flag of freedom waves".(1)

SOUTH CAROLINA

Civil
Rights

South Carolina enacted similar legislation between the nineteenth and twenty-first of December, although as early as the nineteenth of October, the legislature had made some provision for the civil rights of the negro. This statute provided that persons of color, although not entitled to social or political equality with white persons, should nevertheless have the right to acquire, own, and dispose of property, to make contracts, to enjoy the fruits of their labor, to sue and to be sued, and to receive protection in their persons and property. In the December law it was provided that in every case in which a colored person was a party, or which affected the person or property of a colored person, such persons should be competent witnesses.(2) Persons of color living together as husband and wife should

1. Garner, Recon. in Miss., 115.

2. McPherson, Pol. His., 34, 36.

be considered as such before the law; but all persons of color desiring thereafter to become husband and wife, should have the contract of marriage duly solemnized. Marriage between a white person and a person of color, and the marriage of an apprentice without the consent of his master, was illegal and void.(1)

South Carolina went much further into detail than any other state in regard to contracts for service. Contracts for one month or more were to be in writing, attested by one white witness, and presented to the judge of the district court or a magistrate for approval within twenty days after the execution. If the servant was to receive only board and room, a written contract was unnecessary.

Labor on farms was minutely regulated. Hours of labor, except on Sunday, were from sun-rise to sun-set with a reasonable interval for breakfast and dinner. The laborers must be careful of the animals and property of their masters; they were answerable for all property lost, destroyed, or injured by their negligence, dishonesty, or bad faith. All time lost not occasioned by the master and all losses caused by neglect of duty might be deducted from the wages of the servant.(2)

If servants complained of their tasks, the district judge or magistrate might reduce the amount; but if the servant left his employment without due cause he forfeited all the wages due him. The master was not to be liable to third

1.Fleming, Doc.His., I,294.

2.Stephenson, Discrim.in Am.Law, 48-49.

persons for the voluntary misdemeanors of his servants. It was, however, the duty of the master to protect his servant from violence at the hands of others and to aid him in securing redress for his injuries. A servant was not liable for contracts made by the express authority of his master. A person of color, who had no parents living and was ten years of age and not an apprentice, might make a valid contract for labor or service for one year or less.

House servants had at all hours of the day and night and on all days of the week to answer promptly all calls, and to execute all lawful orders and commands of the master's family. It was the duty of this class of servants to be especially civil and polite to their masters and his family or guests, and they in turn were to receive gentle and kind treatment.

The circumstances under which a servant might leave his master were: an insufficient supply of food; unauthorized attack upon his person or upon a member of his family, not committed in defence of the person, family, guest, or agent of his master; invasion by the master into the family life of the servant; or failure of the master to pay wages when due. In any of the above cases the servant might collect all wages due him at the time of his departure.

The statute provided for a regular form of contract between the master and the servant, which was understood to include all the above stipulations unless otherwise pro-

vided.(1)

Apprentice

Law

A child, over the age of two years, born of a colored parent might be bound by the parent as an apprentice to any respectable white or colored person who was competent to make a contract; a male until he should attain the age of twenty-one years might be so bound out, and a female until the age of eighteen. Colored children whose parents were unable or unwilling to support them, might be bound as apprentices by the district judge or magistrate. Males of the age of twelve years and females of the age of ten years were to sign the indenture of apprenticeship. The indenture of voluntary apprenticeship was to be under seal and to be signed by the master, the parent and the apprentice, attested by two credible witnesses, and approved by the district judge or magistrate.

The master or mistress was required to teach the apprentice the business of husbandry or some other useful trade, specified in the contract; to furnish him with wholesome food and suitable clothing; to teach him habits of industry, honesty, and morality; to govern and to treat him with humanity; to send him to school at least six weeks in every year after he became ten years of age, if there were a school within a convenient distance, and provided that the teacher of such school had a legal license to establish it. The master was given authority to inflict moderate chastisement and to impose reasonable restraint upon his apprentice,

and to recapture him if he departed from his service.

To the apprentice also applied the provisions for the servant under contract, except that the master was obliged to furnish him with medical aid, as he did not have to do in the case of the servant. All cases of dispute between the master and apprentice were to be tried before a magistrate, who had power to punish the party at fault, in such manner as he deemed proper. After the expiration of the term of service, the apprentice was entitled to a sum not exceeding sixty dollars from his master. Any mechanic, artisan, shop-keeper, or other person who was required to have a license, was not allowed to receive any colored apprentice until he had first received such license.(1)

Vagrancy
Law

Vagrancy and idleness were considered as public grievances and punishable as crimes. All persons who had not some fixed and known place of abode; those who had not some lawful employment and visible means of an honest and reputable livelihood; those who wandered from place to place, vending, bartering, or peddling any commodities without a license; all common gamblers; persons who led idle or disorderly lives; those who, not having sufficient means of support, were able to work and did not work; those who did not provide a reasonable and proper maintenance for themselves and families; those who were engaged in representing publicly or privately any theatrical or musical performance or similar amusement for fee and reward, without a license;

fortune-tellers; sturdy beggars; common drunkards; those who hunted game of any description, or fished on the land of others or frequented the premises, contrary to the will of the occupants, were to be deemed vagrants. On conviction the defendant was liable to imprisonment and to hard labor, one or both as should be fixed by the verdict, not in any case to exceed twelve months.

That the South Carolina legislature had the negro primarily in mind is shown by the fact that this section is included in the act to "establish and regulate the domestic relations of persons of color and to amend the law in relation to paupers and vagrancy.

Upon any lands where there were on December 21, 1865, helpless persons of color who were formerly slaves of the owner or occupant of the farm or lands, and who had been there the six months previous, it was made unlawful for the occupant of the land to evict such persons before January 1, 1867, under penalty of a fine of fifty dollars and imprisonment for one month.

When a person of color should be unable to earn his support and should be likely to become a charge to the public, the father and grandfathers, mother and grandmothers, child and grandchild, brother and sister of such person, was, each according to his ability, to be forced to contribute each month for the support of such poor relative. There was a fund maintained for the relief of indigent

negroes composed of fees paid for the approval of contracts for service, instruments of apprenticeship, licenses, fines, penalties, forfeitures, and wages of convicts. If this fund should become insufficient it was provided that a tax of one dollar might be imposed upon all male persons of color between the ages of eighteen and fifty years, and a tax of fifty cents upon all females between the ages of eighteen and forty-five years; this tax must be paid on the day fixed or the person rendered himself liable to pay a double tax. The whole system of pauper laws was worked out in great detail.(1)

It was unlawful for a negro to own a distillery of spirituous liquors or any establishment where they were sold. Violation of this provision was made a misdemeanor punishable by a fine, corporal punishment or hard labor. Moreover, no person of color was allowed to pursue or to practice the business of artisan, mechanic, shop-keeper or any other trade on his own account or for his own benefit, or in partnership with a white person, until he had obtained a license from the judge of the district court, which license was good for one year only. Before granting the license the judge must be satisfied of the skill, fitness, and good moral character of the applicant. For a shop-keeper or peddler the annual fee was one hundred dollars; for a mechanic, artisan, or member of any other trade, it was ten dollars. The judge might revoke the license upon complaint being made to him. Negroes

could not practice any mechanical art without showing that they had served their term of apprenticeship, or were then practicing the art or trade. A violation of this provision was to be punished by a fine double the amount of the license required, one-half to go to the informer.(1)

Penal
Code

For a person of color to commit any wilful homicide except in self-defense; to commit an assault upon a white woman; to raise an insurrection or rebellion in the state; to cause bodily injury dangerous to the life of any other person; to return to the state within the period of prohibition; to steal a horse or mule; or to steal cotton packed in a bale ready for market, was to be guilty of felony.

Since persons of color did not constitute part of the militia of the state, no one of them, without permission in writing from the district judge or magistrate, was to be allowed to keep any fire-arms, swords or other military weapons, except that those who owned farms might be allowed to keep shot-guns or rifles, such as was ordinarily used in hunting, but not muskets, pistols or other fire-arms or weapons appropriate for uses of war.

No person of color might migrate into or reside in in the state unless within twenty days after his arrival, he should enter into a bond with two free-holders as sureties for his good behavior, and for his support if he should be unable to support himself.

If upon conviction the offender did not immediately

pay his fine and costs, he was to be detained and other punishment substituted. If the crime were infamous the substitution was to be hard labor, corporal punishment, and confinement in a treadmill or stocks, at the discretion of the judge or magistrate. In case of a misdemeanor committed by a person of color, any person present might arrest the offender and take him before a magistrate to be dealt with as the case might require.(1)

To prevent the application of these laws, General Sickles of the military department of South Carolina, issued on January 17, 1866, regulations which practically nullified them. According to these regulations all laws were to be applicable alike to all inhabitants. All lawful trades or callings were to be followed by all persons irrespective of caste; nor should any freedman be obliged to pay for a license any tax or fee that was not imposed on all other persons. The vagrancy laws of South Carolina applicable to free white persons were to be the only vagrancy laws applicable to freedmen. The constitutional right of all loyal and well-disposed inhabitants to bear arms was not to be infringed. No penalties nor punishments differing from those to which white persons were amenable were to be imposed upon freed people. Corporal punishment was not to be inflicted except in the case of minors, and then only by parent, guardian, teacher, or one to whom the minor was lawfully bound out by indenture of apprenticeship.

District commanders were commanded to enforce these regulations by suitable instructions to sub-district and post-commanders; taking care that justice be done; that fair dealing between man and man be observed; and that no unnecessary hardship and no cruel nor unusual punishment be imposed upon anyone.(1)

LOUISIANA

In Louisiana we find very severe legislation adopted by the municipalities and parishes as early as July 3, 1865, although the state legislature did not provide any special regulations for the negro until December 21, 1865. No state had made such rapid progress in the re-organization of its local government as had the state of Louisiana; in most of the parishes the parish authorities had exercised their functions for some time.

Since the relations between master and servant had been changed, it was considered necessary to provide for the proper police and government of the recently emancipated negroes in their new relations to the municipal authorities. The police board of Opelousas passed an ordinance to the following effect: no freedman was allowed on the streets after ten o'clock at night without a written permit from his employer; no negro was to rent or keep a house within the limits of the town under any circumstances, nor reside within the limits of the town except as the servant of some

white person. No freedman should sell, barter or exchange any articles of merchandise or traffic within the limits of the town without permission in writing from his employer, the mayor, or president of the police board. No freedman not in military service should be allowed to carry fire-arms or any kind of weapons, within the limits of the town, without a special permit from the mayor or from the president of the board of police. Any violation of this ordinance was punishable by a fine or hard labor on the public streets.(1)

In the Parish of St.Landry regulations were similar to the ordinance in the town of Opelousas, differing principally in that they were more severe. Heavier fines and penalties and a system of corporal punishment was provided. The negro was compelled to find an employer, and no provision was made for his leaving in case he did not. The corporal punishment provided consisted in confining the body of the offender within a barrel placed over the shoulders, in the manner practised in the army; such confinement not in any case to continue longer than twelve hours.(2)

Civil
Rights

The statutes enacted by the state legislature providing for the freedmen were very similar to those in the other states. All agricultural laborers were required to make contracts for labor for the ensuing year within the first ten days of January; the contracts were to be in writing, and were to be made by the heads of the families, to embrace the labor of all the members and to be binding

1.Documents Accompanying Report of Schurz, 92-93.
2.Fleming, Doc.His., I,278-279.

on all the minors thereof. One-half of the wages were to be paid at intervals agreed upon by the parties, but it was lawful for the employer to retain the remainder until the completion of the contract. In case the laborer left his place of employment without the consent of the employer he was to forfeit all wages due him at the time of his abandonment. In case of illness, wages for the time lost were to be deducted; where illness was feigned for purposes of idleness and for refusal to work the amount deducted for the time lost was to be double the amount of wages. Should the refusal continue for more than three days the offender was to be reported to the justice of the peace, and was to be forced to labor on the roads, levees or other public works, without remuneration, until he should consent to return to the service of his employer.

When in health the laborer must work ten hours a day in summer and nine in winter, unless it was otherwise stipulated in the contract. He must obey all proper orders of his employer or his agents; take proper care of his work-horses, oxen, stock, and all agricultural implements. Employers were to have the right to make a reasonable deduction from the wages of the servant for all injuries done to animals or implements committed to his care, or for bad or negligent work. Failing to obey reasonable orders, neglect of duty, impudence, disrespectful language to or in the presence of the employer, his family or his agent, or quar-

relling and fighting with other laborers was termed disobedience, which was punished with a fine of one dollar. For all time lost during work hours, except in case of illness, the servant was fined twenty-five cents an hour. Laborers were not to be required to work on Sunday except to take the necessary care of stock and other property on the plantations, and to do the necessary household duties. All difficulties arising between the employer and his laborers were to be settled by the former; if the settlement were not a satisfactory one to the laborer he was allowed an appeal to the nearest justice of the peace and two free-holders, one to be selected by the employer and one by the servant.

Any one who should entice away, feed or harbor any person who should leave his employer, or any apprentice, without the permission of the employer, was to be liable for damages to the employer, and upon conviction, should be subject to pay a fine of not more than five hundred dollars nor less than ten dollars, or imprisonment in the parish jail for not more than twelve months nor less than ten days, or suffer both penalties, at the discretion of the court.(1)

Vagrancy
Law

Any person charged with vagrancy was to be arrested on the warrant of any judge or justice of the peace, and if said judge or justice was satisfied by the confession of the offender or by competent testimony that he was a vagrant, he was required to enter into bond, with security to be approved by the officer, for his good behavior and industry for the

period of one year. If he failed to give the necessary security, he was to be detained and hired out for a period not exceeding twelve months, or be forced to labor on the public works, roads or levees. All proceeds of hire were to be paid into the parish treasury to be used for the benefit of paupers. Persons hiring such vagrants were required to furnish such clothing, food and medical attention as they furnished their other laborers.(1)

ALABAMA

There were only two laws passed by the Alabama Legislature which made a distinction before the law between the negroes and the whites, during the winter of 1865-1866; one made it a misdemeanor to purchase or to receive from persons of color any stolen goods, knowing the same to have been stolen; and the other gave the freedmen the right to sue and to be sued, and to plead in the state courts to the same extent as whites. All other laws, in theory, applied equally to the two races. Several bills discriminating against the negro passed the legislature between December 9, 1865 and February 15, 1866, but they were vetoed by the governor.(2)

Civil Rights

A descendant of any negro to the third generation was to be classed as a person of color. All marriages between persons of color, whether they were contracted in the state of slavery or since emancipation, were made valid,

1. McPherson, Pol. His., 43.

2. Fleming, Recon. in Ala., 379-380.

provided the parties were still living together as man and wife; all future marriages, however, were required to conform to the same ceremonies as those governing the marriages of white persons, except that negroes were not compelled to give bond in marrying.

All contracts for service were to be made in writing or in the presence of some reliable white person, and were to be binding for no longer than one year. It was made unlawful for anyone to interfere with, hire, employ, entice away or induce to leave his master any laborer who was thus under contract for service.

Freedmen were allowed to testify in open court in any case in which negroes were parties, or in any case which directly or indirectly concerned the person or property of a negro.(1)

Apprentice
Law The apprentice law was the extension of an old statute and was intended to make it possible to care for the dependednt children, white as well as black, who were left homeless after the war. It was made the duty of county officials to report to the probate court all minors under the age of eighteen who were destitute orphans, or whose parents were unable or unwilling to support them. In case the minor was the child of a freedman, the former owner was to be given the preference in granting an apprenticeship, if he were proven a suitable person. The master was required to give bond that he would provide the apprentice with sufficient

food and clothing; that he would treat him humanely; furnish him with medical attention in case of illness; and teach or have him taught to read and write if he should be under fifteen years of age. In case the apprentice should leave the employment of the master without the consent of the latter he might be arrested and remanded by the court to the service of the master. If the apprentice refused to return he was to be committed to jail until the next meeting of the probate court when the case would be investigated; if the apprentice had not good cause to leave he would then be punished under the vagrancy law; if, on the other hand, the apprentice had, in the opinion of the court, sufficient provocation, he was to be released from the indenture and the master fined not more than one hundred dollars which was to be given to the apprentice. It was made a penal offence to sell or give intoxicating liquors to an apprentice or to gamble with him.(1)

Vagrancy
Law

Stubborn and refractory servants, laborers and servants who loitered away their time or refused without just cause to comply with their contract for service, were included in the class of vagrants. A vagrant might be fined fifty dollars and costs, and if the fine were not paid be hired out until it was paid, but not for a longer period than six months. The proceeds of fines and hiring was to be paid into the county treasury to be used in providing for the poor.(2)

1.Fleming, Recon.in Ala., 381.
2.Ibid, 382.

Penal
Code

A new penal code was adopted which abolished whipping and branding as legal punishments, and substituted what was known as 'hard labor' for the county which included labor on the public roads, bridges, etc. The new code made no distinction between races except on the question of marriage; no intermarriage between white persons and negroes being allowed.(1)

FLORIDA

Civil
Rights

In Florida the "Black Code" was enacted between the eleventh and fifteenth of January, eighteen hundred and sixty-six. One statute provided that all contracts with persons of color for more than thirty days were required to be in writing, and fully explained to the laborers before two creditable witnesses. If, after any such person had contracted to labor on any farm or plantation, he should refuse or neglect to perform the stipulations of the contract, he would be liable to arrest and trial before the criminal court of the county; and upon conviction he would be subject to all the penalties prescribed for the punishment of vagrancy. If the employer should violate his contract by refusing or neglecting to pay the stipulated wages or by discharging the employe before the expiration of the time stated, unless for just cause, he was to be liable to arrest and trial; and upon conviction was to give such damages as the jury deemed proper.

The judicial tribunals of the state were accessible to all alike without reference to color for the prosecution of

rights of person and property. All the criminal laws of the state applicable to white persons, which were not in conflict with this statute, were to apply equally to all inhabitants irrespective of color.

All colored persons living together as man and wife and not married according to the laws of the state, were to be regularly married before some person authorized to perform the marriage ceremony within the next nine months. Marriage between the races was forbidden.

Schools for freedmen were to be established, which were to be supported by a tax of one dollar upon all colored men between the ages of twenty-one and fifty-five years, and by tuition fees to be collected from the pupils.(1)

Vagrancy
Law The vagrancy law was made to apply to every able-bodied person who had no visible means of support and who was not employed at some legitimate labor, and all persons who should be leading an idle or profligate life. Any one accused of vagrancy might be arrested and bound in sufficient surety for good behavior for one year. Upon refusing or failing to give the required security the offender might be committed for trial, and if convicted would be sentenced to labor or imprisonment not exceeding twelve months, to ^{punishment by} whipping not exceeding thirty-nine stripes, by standing in the pillory, or by being forced to labor for some responsible person, the proceeds of hiring being deposited in the county treasury.(2)

1. McPherson, Pol. His., 38-39.

2. Ibid, 39.

Penal
Code

By the new penal code all negroes were forbidden to use or to keep in their possession any bowie-knife, dirk, sword, fire-arms or ammunition of any kind, unless they had obtained a license from the county probate judge. Exciting or attempting to excite, by writing, speaking or other means, any insurrection amongst any portion of the inhabitants was considered a felony to be punishable with death. Persons forming any military organization unauthorized by law, were to be fined not exceeding one thousand dollars. Burglary was to be punished with death or by a fine of one thousand dollars. An assault upon a white woman was punishable with death.

Whenever the penalty for the offence was limited to a fine or imprisonment, there might be allowed as an alternative the punishment of standing in the pillory for an hour, or punishment by whipping not exceeding thirty-nine stripes, or both at the discretion of the jury.(1)

VIRGINIA

Civil
Rights

On the twenty-eighth of February, eighteen hundred and sixty-six steps were taken by the state legislature of Virginia to make provision for the emancipated slaves. It was then provided that no contract for labor for more than two months should be binding upon a person of color unless such contract were in writing, and acknowledged before a justice or certain other officials and witnessed by at least

two trustworthy persons who should read and explain the contract to the freedman. Every person having one-fourth or more of negro blood was termed a person of color. In all cases at law in which a colored person was a party or would be benefited or injured by the result, or in any cases where it should be desired by either party, negro testimony was to be permitted but the worth of the testimony was to be subject to the discretion of the court.

All laws in respect to crimes and punishments and in respect to criminal proceedings applicable to white persons were to apply in like manner to colored persons.(1)

Apprentice
Law The instrument by which any minor was bound as an apprentice was required to specify the age of the minor and the business or trade that he was to be taught; also the master was compelled to teach him reading, writing and common arithmetic, whether or not it was so expressly provided in each instance.(2)

Vagrancy
Law Any person alleged to be a vagrant might be arrested upon the issuance of a warrant by a justice of the peace, and upon conviction be hired out for a term not exceeding three months, his wages being used for the support of himself and family. If any vagrant so hired out should attempt to escape from his employer without sufficient cause, he was to be returned to his employer and be forced to labor one month longer than the original term specified; the employer might then have power, if permitted by the justice of the

1.McPherson, Pol.His., 41-42.

2.Ibid, 41.

peace, to work the offender with ball and chain.

Among the persons alleged to be vagrants were included all persons not providing sufficient support for themselves and family; all who lived idly and without employment, or refused to work for the ordinary wages given to other laborers in similar positions.(1)

General Terry of the military department for Virginia, issued a command ordering the non-enforcement of the vagrant law; giving as sufficient cause for such action the argument that freedmen would be compelled, under penalty of arrest and punishment as criminals, to accept whatever wages individual employers or combinations of employers might determine; the ultimate effect being a practical re-establishment of slavery, if not a worse condition of servitude than that from which the slaves had been emancipated.

President Johnson refused to interfere with this order of General Terry, and the state legislature took no further action on the subject.(2)

GEORGIA

In Georgia the legislature undertook as early as the fifteenth of December, eighteen hundred and sixty-five, to make some regulations for the government of freedmen, but they were not completed until the twentieth of March of the following year.

By the civil rights bill persons of color were made

1.McPherson, Pol.His., 42.

2.Ibid, 42.

Civil
Rights

competent witnesses in all court proceedings where the person or property of a colored person was endangered. Persons of color living together as husband and wife were to be considered as such, except in cases where a man had two or more reputed wives, or a woman two or more reputed husbands. In such cases it was provided that one was to be selected and the marriage ceremony performed. All marriages between white and colored persons were forbidden.

Persons of color were permitted to make and enforce contracts, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to have the full and equal benefit of all laws and proceedings for the security of person and estate, and to be allowed the same punishments and penalties, for the commission of any offence, as that prescribed for white persons committing the same offence, with such exceptions as specified in the act.(1)

Vagrancy
Law

All idle persons who were able to work and not having property to support them, and all persons having no visible and known means of earning a fair, honest, and reputable livelihood, were to be considered as vagrants; and upon conviction, were to be fined and imprisoned or sentenced to labor on the public works; or at the discretion of the court, they might be bound out to some person, for no longer than one year, upon such consideration as the court might prescribe. In addition the law provided that the employer of the vagrant was to be required to give bond in a sum not

exceeding five hundred dollars, payable to the court, for the guarantee of food and clothing as well as medical attendance to the convict during the term of service.(1)

Penal
Code

For any wilful and malicious burning of the occupied dwelling of another, for burglary in the night, and for stealing a horse or mule, the law provided that the punishment should be death unless the offender should be recommended by the jury to the mercy of the court. In case of crimes punishable by fine or imprisonment, the fine was not to exceed one thousand dollars and the imprisonment not to exceed six months; if corporal punishment was provided as the penalty thirty-nine lashes was to be the maximum number permitted; and if working in a chain gang on the public works was the sentence, the limit of months of labor was to be twelve. Any one or more of these penalties might be given at the discretion of the judge.(2)

NORTH CAROLINA

Civil
Rights

Regulations concerning the government of the freedmen were made by the legislature of North Carolina on the tenth of March, eighteen hundred and sixty-six. To the negroes were given the same rights as those possessed by white persons in the courts. They were made eligible as witnesses when the rights or property of colored persons were in question. Provision was also made for legalizing marriages between negroes made during slavery; but marriages between

1. McPherson, Pol. His., 33.

2. Ibid, 33.

the races were prohibited.

Contracts with negroes were not binding, in case of property of the value of ten dollars or more or when the payment amounted to ten dollars or more, unless the contract were in writing and signed by the debtors, with a white person who could read and write as witness.(1)

Apprentice
Law

The laws regarding white apprentices were extended to negro apprentices; in binding out apprentices of color, however, the former owner was to be given the preference to other persons if he should be a suitable person. The master and mistress were required to provide food, clothes, and lodging for the apprentice, and to teach him reading, writing and elementary arithmetic. At the expiration of the apprenticeship they were to pay him six dollars and to furnish him with a new suit of clothes and a new Bible.

If the apprentice were mistreated the court might remove him from his employer and bind him to some other person. If, on the other hand, the apprentice had been treated according to the law, and after arriving at the age of eighteen years left his master, before he had completed his term, he might be compelled to remunerate the master for the loss of service.(2)

Penal
Code

The criminal laws of the state were extended to persons of color, and the same punishments were to be inflicted upon them as upon white persons, except in the case of an

1. McPherson, Pol.His., 29.
2.Fleming, Doc.His., I,291-292.

assault upon a white woman.(1)

TENNESSEE

By a statute enacted on the twenty-fifth of January, eighteen hundred and sixty-six, colored persons in Tennessee were given the right to serve as witnesses in court; but more detailed regulations for the freedmen were not made until the twenty-sixth of May in the same year.

Civil Rights Then persons of color were allowed to make and enforce contracts, plead in court, inherit and own property; furthermore they were given the benefits of all the laws and proceedings for the security of person and property equally with white persons, and they were not to be subject to different laws for committing like offences.

All persons living together as man and wife during slavery were to be considered as such.

Apprentice Law All laws governing the relation of master and apprentice applicable to white persons were made to apply also to persons of color.(2)

TEXAS

The legislature of Texas was able to profit somewhat by the experience of other states, since no specific regulations were made for the freedmen until October. The constitution adopted at that time provided that negro testimony was to be permitted in the courts in all cases concerning persons of color.(3) By a statute enacted on the tenth

1.McPherson; Pol.His., 29.

2.Ibid, 42-43.

3.Gammel, Laws of Texas, V, 977.

of November, eighteen hundred and sixty-six, freedmen were given the right to make and enforce contracts, to sue and to be sued, to inherit, purchase, lease, hold, sell, and convey real and personal property, to make wills and testaments, and to have and enjoy the rights of personal security, liberty, and private property. No discrimination was to be made against such persons in the administration of the criminal laws. Nothing in this provision, however, was to be so construed as to repeal any law prohibiting the intermarriage of white and black persons, or to permit any other than white persons to serve on juries, to hold office, or to exercise the electoral franchise.(1)

By the statute enacted on the twenty-seventh of

Apprentice

Law

October regulations were made concerning negro apprentices. The law provided that minors might be bound out by their parents or guardians to some suitable person, or if they had arrived at the age of fourteen years they might of their own accord enter into a condition of apprenticeship, provided no opposition was made by their parents or guardians. Indigent and vagrant minors were to be bound out by the county judge. The apprentice was to be taught some specific trade or occupation, and was to be furnished with food and clothing, and with medical attendance in case of illness.(2)

A statute enacted on the eighth of November pro-

Vagrancy

Law

vided that any person convicted of vagrancy, who did not pay his fine within a reasonable time, might be put to such labor

1. Gammel, Laws of Texas, V, 1049.

2. Ibid, 979.

and in such manner as the police or municipal authorities should provide, until the fine and costs were paid, at the rate of one dollar per day.(1)

ARKANSAS

Civil Rights

No action seems to have been taken by the legislature of Arkansas until the sixth of February, eighteen hundred and sixty-seven, when the civil rights of negroes were defined. By this statute it was provided that persons hitherto known as slaves or free persons of color were to be given the right to make and enforce contracts, to sue and to be sued, to inherit, purchase, lease, sell, hold, convey, and assign real and personal property, make wills and testaments, and have full and equal benefit of the rights of personal property, personal security, and personal liberty, that white persons then had.

Marriages between negroes were to be governed by the same laws as those in force for white people. This statute was not to be interpreted, however, to permit marriages between the races.

Schools were to be established for the colored children, and no negro was to be permitted to attend any other schools.

The common law of the state, forbidding negroes voting at elections, sitting on juries, or serving in the militia, was to continue in force.(2)

1.Gammel, Laws of Texas, V,1021.

2.Fleming, Doc.His., I,274-275.

Common features in these codes are readily discernible. By law the negro was given all the civil rights possessed by white persons, except in proceedings between the whites when negro testimony was not permitted; although in Virginia it might be allowed at the desire of either party concerned, but its worth was left to the discretion of the court. In all cases concerning his own race, however, the standing of the negro was equal to that of a white person. The races were not allowed to intermarry, but the same ceremonies and legal procedure applied to each. In general the vagrancy and apprentice laws were intended to apply equally to the whites and blacks; the mere fact that the negro vagrants were more numerous than the white, however, no doubt accounted for the fact that in many states it was provided that the vagrant was to be hired out for a period of time in case he should be unable to pay his fine.

In spite of the many common elements in the laws there seems to be no evidence that the code of any state was used as a direct model by the others. It is hardly reasonable to doubt that the states whose legislatures acted later in the year were not partially influenced by those states who had earlier enacted codes, yet it seems equally certain that the laws varied with the conditions within the various states. For example, the states in which the laws were harshest are those states in which the negro population was greatest; particularly in Mississippi and South Carolina where the negroes outnumbered

bered the whites, and in Louisiana where they were nearly equal.(1) In these states the contract and vagrancy laws were most stringent and the penal codes were most severe. Furthermore these states took action before the Christmas holidays, when, according to rumors among the negroes, the lands and property of the whites were to be divided among them. Thus it seemed essential to the white population that strict regulations should be provided for the freedmen, in order to prevent any riots or insurrection occurring at that time. After the holidays had passed, one cause for harsh legislation was removed.

It is also probable that the states which did not enact codes until 1866 were influenced by the storm of northern opposition which the earlier laws had occasioned. These laws had been bitterly denounced by northern newspapers and also in Congress. Under other circumstances it might have been well for the negro had such provisions been regularly enforced, but at this time they were not practical in view of the fact that the radicals of the North were jealously watching every movement of the southern law-makers, and hoping for just such an opportunity. In fact, it seems not improbable that they would have disapproved of any action taken by the southern legislatures.(2)

1.Rhodes, U.S., V,558.

2.Fleming, Doc.His., I,243-244.

CHAPTER III

Opposition To Codes

As already noted the states which acted in 1865 drew a wider distinction between the races, than those whose legislatures did not meet until 1866. The earlier laws had been severely criticized by the northern people; having been represented as deliberate attempts to re-enslave the negro, avoiding the name but preserving the substance of slavery.(1) To the northern mind the benefits gained by the civil rights which were grudgingly bestowed upon the negroes were more than counteracted by the harsh criminal legislation provided for them. Opposition was further encouraged by the reports of outrages and cruelties practiced upon the freedmen by the poor whites.

Of the reports made to the president on the conditions in the South there are three of especial interest; two made in December, 1865, by General Grant and Carl Schurz, and one in April, 1866, by Benjamin Truman. The reports of Grant and Truman are very sympathetic, but the report of Schurz is extremely antagonistic. Grant spent but little time in the South preparing his report, but his military position gave him an excellent opportunity to become familiar with conditions, and to secure interviews with prominent persons in the South whose opinions might be relied upon. In his report he makes the fol-

1. Dunning, Reconstruction, 55.

lowing statement: "I am satisfied that the mass of thinking men in the South accept the situation of affairs in good faith. The questions which have heretofore divided the sentiment of the people of the two sections — slavery and states rights, or the right of a state to secede from the Union — they regard as having been settled by the highest tribunal — arms — that man can resort to. I was pleased to learn from the leading men whom I met that they not only accepted the decision arrived at as final, but, now that the smoke of battle has cleared away and time has been given for reflection, that this decision has been a fortunate one for the whole country, they receiving like benefits from it with those who opposed them in the field and in the council." (1)

But it was the report of Schurz that had the most influence on the northern people; for it was more in accord with their prejudices, and could be used as a strong argument in favor of the severe regulations to which it was the desire of the radical republicans to subject the southern states. Schurz spent several months in the South; his report is careful and detailed. He came to the conclusion that loyalty in the South consisted only in submission to necessity; there being an entire absence of national spirit and patriotism. Although the freedman could no longer be considered as the property of the individual master, he was the slave of society, and all state action tended to keep him such. It was impossible for the southerner to realize that the negro was free; in describing

this state of affairs Schurz said: "A negro is called insolent whenever his conduct varies in any manner from that a southern man was accustomed to when slavery existed... Seldom are such complaints as insubordination and insolence heard from northern men... It frequently struck me that persons who conversed about every other subject calmly and sensibly would lose their tempers as soon as the negro question was touched." (1)

This report by Schurz only added fuel to the flame in the minds of northern republicans. In Congress, Wilson, Sumner, and other extremists, with wonderful ingenuity distorted both the spirit and the purpose of the southern laws. It is noteworthy, however, that the laws received little attention in the House of Representatives, and that they were discussed in the Senate but three days during the session. S.S.Cox, one of the conservative democratic leaders in Congress remarked that it was surprising that the intelligent men of Mississippi could have persuaded themselves, after the terrible experience through which they had passed, that the triumphant North, now thoroughly imbued with the anti-slavery sentiment, would for a moment tolerate this new code. Such legislation was far removed from the temporary guardianship of the freedmen which Mr.Lincoln thought would be necessary to prevent idleness, vagrancy, and disorder.(2)

Mr.Sumner, a senator from Massachusetts, in supporting a bill introduced December 20, 1865, by Mr.Wilson of the same state, "to maintain the freedom of the inhabitants in the

1.Senate Ex.Doc., 1st Sess., 39th Cong., No.2, 17, 31.

2.Cox, Three Decades, 395.

states declared in insurrection and rebellion by the proclamation of the president of the first of July, 1862", spoke as follows: "A body of men calling themselves the legislature (in South Carolina), but having small title to be considered a legal body, have undertaken to enact a Black Code, separating the two races, in defiance of every principle of equality ... Thus are the freedmen, whose liberty the United States are bound to maintain, handed over to compulsory service, and under no circumstances is land to be rented to them. And yet these people announce that they accept the existing state of things, and that it is their honest purpose to abide thereby." (1)

Mr. Wilson, in advocating the same bill, addressed the Senate on the following day in this manner: "They have enacted a law in the state of Mississippi that will not allow the black man to lease lands or to buy lands outside of the cities... They have enacted a law in the state of Louisiana that he must get a home in twenty days, and they will not sell him land nor allow him to lease land. We must annul this; we must see to it that the man made free by the constitution of the United States, sanctioned by the voice of the American people, is a freeman indeed; that he can go where he pleases; work when and for whom he pleases... Many of the difficulties occurring in the rebel states between white men and black men, between the old masters and the freedmen, grow out of these laws... I want every rebel and every rebel sympathizer, every repentant and unrepentant rebel in the country to understand that the loyal

1. Cong. Globe, 39th Cong., 1st Sess., I, 93.

men of this nation who voted their treasure and offered up their blood, who gave their sons to the preservation of the menaced Union and the imperiled cause of liberty, have sworn ...that these enfranchised men shall be free indeed, not serfs, not peons, and that no black laws nor unfriendly legislation shall linger on the statute-book of any commonwealth in America." (1)

All the members, however, were not so harsh in their criticisms. Mr. Cowan, a senator from Pennsylvania, reprimanded the more outspoken of the radicals: "We are told here of the exceptional instances of bad conduct on the part of the people of the South... One man out of ten thousand is brutal to a negro, and that is paraded here as a type of the whole people of the South, whereas nothing is said of the other nine thousand nine hundred and ninety-nine who treat the negro well. One man expresses a great deal of dissatisfaction at the present state of affairs and that is paraded here, while nothing is said of the other ten thousand men who are contented to accept it, and make the most of it... I therefore hope...that we intend, after the great military victory which we have achieved, to achieve another by magnanimity and clemency in our conduct toward them (the southerners); that we will win them back as they were before, our friends and our brothers, of the same race and of the same lineage. I hope too that this angry, irritating, and exciting mode of treating this subject, which is calculated to make us anything else than friends, will be dis-

1.Cong.Globe, 39th Cong.,1st Sess., I,111-112.

carded hereafter, and that we shall coolly and calmly and in the spirit of the nation, examine the question and do with it that which will be calculated to restore the old harmony and peace and the old Union again." (1)

Opposition to the legislation was not confined wholly to the North, for we find some evidence of it in the South as well. The Clarion, one of the most influential journals in the state of Mississippi, in its issue for January 7, 1866, stated that the action of the legislature was in many respects unfortunate, and should be corrected. Several southern judges expressed the opinion that the action had been foolhardy and that some of the laws went entirely too far.(2)

Those responsible for the black codes undoubtedly did not fully appreciate the disposition of the North; for it was such action on the part of the South that led the radical republicans in Congress to refuse to recognize the president's plan of reconstruction and to inaugurate a stricter policy of their own. They justified this action by stating that the South had not accepted the results of the war in good faith and their actions mocked northern sentiment. Many conservative members were won over to the side of the extremists because of their exasperation at the southern legislatures. Not only were the northerners determined to humiliate the South by forcing it to submit to military rule, but they also advocated the enfranchisement of the freedmen that they might be thus enabled to defend themselves.

1. Cong. Globe, 39th Cong., 1st Sess., I, 96.
2. Garner, Recon. in Miss., 116.

Although the severity of the congressional reconstruction cannot be justified, it can be explained. It was but natural that the North should be inflamed at any suggestion of the re-enslavement of the negro race, and some of the laws certainly appeared to have in view something similar to this. Surely the lot of the black man was not an enviable one. As one contemporary writer remarks: The southerner "is proud and will have nothing less than complete deference; he believes that the blacks were born for slavery, and is intolerant of anything resembling independence and self-reliance in them; moreover he is an original secessionist, and thinks emancipation unjust. In short, he wishes still to be master, is willing to be a kind master, but will not be a just employer." (1)

1. The Nation, I, 299.

CHAPTER IV

Conclusion

There can be no doubt that if the black laws had been enforced they would have affected the blacks more than the whites, although in many cases they were meant to apply to both. Practically all laws regulating society, then and now, would bear more hardly on the negroes. Decidedly, the laws were not passed merely to defy the North, although many people honestly believed them to be. Unfortunately the difficulties of the problem were not comprehended in the North; it was not in a position to understand or to correctly interpret the actions and the attitude of the southerners, and its natural prejudices were only encouraged by many, oftentimes grossly exaggerated, accounts of conditions, published in newspapers and periodicals by persons who wilfully misjudged everything happening in the South. That some collisions between the races should occur was inevitable as a result of the social revolution which had just taken place. 'The black terror' was not known outside the South. Much of the legislation was neither just nor expedient, but it was a natural outgrowth of the terribly disordered social conditions which existed.

The question confronting the southern people was the station to be assigned to the negro race. Was it a race possessing qualities which authorized a status of equal rights with

white persons? Mr. Brinton, in his book on "Races and Peoples", said that the African race was a race the children of which might up to the age of thirteen or fourteen show an intellectual development, equal to white children, but after that there comes a diminution, often a cessation, of their mental development. Some ethnologists place the age even earlier.(1)

Judging from history, it would seem that the negro belongs to an inferior race. From earliest times he has been in one place or another brought into contact with advancing civilization. For over two hundred years he has been under the direct influence of one of the most progressive of peoples. In many northern states he has not been a slave for over an hundred years; yet he has remained on a level of decided mediocrity. As a race, the Africans seem to be lacking in any lasting individuality of character; they soon fall in with the ways and customs of any new environment; although many of them have been on this continent but a few generations, there is no evidence of their keeping any religious practices, or any memory of the language and traditions of their native country. Dullness of intellect, a low state of morals, a want of thrift, are natural results of slavery; but slavery alone cannot explain the lack of progression in the negro race. The many essentials to success which are found in the white race are generally lacking in the negro character; particularly self-control, reliability, manliness, energy, fore-sight, honesty, and purity. The negro himself does not realize this; he firmly believes that

education is the only thing necessary to make him the equal of the white man. Northerners also have been inclined to take this view; and many of them have always believed that when the negro shall have been sufficiently educated only unreasonable prejudice on the part of the southerner will prevent his being willing to associate with the black man or to be governed by him.(1)

The southerners felt confident that the negro was not capable of assuming the duties of citizenship; and we cannot doubt that they were perfectly sincere in maintaining that the interests of property, peace, and good order required such legislation as they enacted; it was necessary as an act of self-defence. As yet the southern states had no conception of the black man as a citizen with rights to be protected; they were only struggling with the old problem of the free negro who had long been considered a menace to the commonwealth. This difficulty had already been the source of considerable legislation in the free states.

The term "Black Laws" was first applied to statutes in the border and northern states; passed with the intention of fixing the position of the free negroes. These laws were very similar to laws passed in the British West Indies. The close analogy between these laws and those of the southern states is obvious, and suggests that they might have served as a model to the codes enacted by the southern legislatures.

In Maryland a statute had been passed in 1846, which

1.Langdon, Case of Negro, Pol.Sc.Quart., VI,36.

denied to negroes the right to testify in cases in which any white person was concerned. In Missouri a statute was enacted in 1847, which forbade the immigration into the state of any free negro, and declared that schools and religious meetings of free negroes were "unlawful assemblages". In Oregon a law was passed in 1849, which forbade the entrance of negroes as settlers or inhabitants; the reason being given that it would be dangerous to have them associate with the Indians, as they were likely to incite the latter to hostility. Iowa and Indiana in 1851 prohibited the immigration of free negroes into the state. In Illinois as late as 1853, it was made a misdemeanor for a negro to come into the state with the intention of residing there; it being provided that any person violating this act should be prosecuted and fined, and if necessary, sold for a time to pay the fine.(1)

In the revised statutes of Connecticut of 1866, there was a law to the effect that any person enticing an apprentice away from his master should be fined a sum not exceeding one hundred dollars or be imprisoned not longer than six months.(2)

It is quite evident that in the North as well as in the South the negro was subjected to various disabilities. When the Civil Rights Bill was brought into Congress, the strongest opposition to it was based on the argument that it would repeal the black laws in the northern states; that there would then be nothing to prevent intermarriage between the

1. Stephenson, Discrim. in Am. Law, 36-38.

2. Herbert, Why the Solid South?, 33.

two races, nothing to prevent the negroes from attending the same schools as the whites, from sitting on juries, voting, using fire-arms, etc.(1) These objections give a comparatively clear idea of the trend of the northern laws on the subject.

Since the negro had been pretty generally recognized as an inferior being, and not worthy of being permitted privileges equal to those of the white man, either socially or politically, it was hardly to be expected that the southern states would immediately share with him those rights. Southern pride strongly resented the interference of Congress in attempting to force negro equality upon it. In a letter written to President Johnson, on September 4, 1865, by the Confederate Secretary of the Treasury, C.G. Memminger of Flat Rock, South Carolina, we find this attitude very pronounced: "The northern people seem generally to suppose that the simple emancipation from slavery will elevate the African to the condition of the white laboring classes, and that contracts and competition will secure the proper distribution of labor. They see, on the one hand, the owner of land wanting laborers, and on the other, a multitude of landless laborers without employment; and they naturally conclude that the law of demand and supply will adjust the exchange in the same manner as it would do at the North. But they are not aware of the attending circumstances which will disappoint these calculations. The laborers occupy the houses of their employer,

1. Flack, Adoption of the 14th Amend., 20-25.

built upon plantations widely separate. The employment of a laborer involves the employment and support of his whole family... It is well known that one of the most important fruits of civilization is a perception of the obligation of contracts. It would be vain, under any circumstances, to count upon such a performance from an ignorant and uneducated population... In the present case must be added the natural indolence of the African race, and the belief now universal among them that they are released from any obligation to labor... They have all their lives been subject to the control and direction of another; and at present are wholly incapable of self-government." (1)

It is of interest to note the opinions of soldiers and officers on the condition of the negro. General Sherman supported the policy of President Johnson and was not disturbed by the Black Codes; the negro could not be re-enslaved, he said, and any efforts of the southerners in that direction would only work to the advancement of the union party. General Thomas spoke of the laws as a judicious attempt to regulate the affairs of the freedmen. General Sheridan advised both Congress and the states to legislate as little as possible for the colored man beyond giving him security in his person and property, since his social status must inevitably be worked out through the necessity for his labor.(2)

Much has been said in criticism of the black codes, part of which at least is doubtless well merited. Many of

1.Fleming, Doc.His., I,248-249.

2.Rhodes, U.S., V,561-562.

the acts supposedly intended to insure the protection of the freedman, were restricted so as to make them practically worthless. The employer was sometimes made the sole judge of the actions of his employes; a power which must inevitably be more or less abused. In the case of license fees some were so exorbitant as to make it next to impossible for the negro to engage in the trade so specified; and such provisions were followed by laws punishing him for his poverty. On the other hand, it is only just to remember that many of the acts were a genuine protection to the negro; such, for example, as the statutes providing that the helpless freedmen should not be evicted from their old homes within a specified time; that all contracts for labor should be in writing and explained to the laborer; that paupers should be cared for; that the apprentice should be taught to read and write by his master, should be properly fed and clothed, and treated humanely. Furthermore, the negro had at that time nowhere been legally recognized as a person to whom political equality belonged as an inalienable right. The course followed by the southerners was the only natural one under the circumstances.

By studying the laws one is able to partially understand the social conditions and problems of the reconstruction period. The regulations of conduct in general suggest very clearly certain social habits of the negroes. It is obvious that it was extremely difficult for the employers to depend

on the labor of the negroes, since each of the states provided for making contracts and usually insisted that the contracts be written. It is equally evident that the freedmen were frequently inclined to vagrancy and idleness, from the fact that the laws required them to secure a lawful home and employment. A careful understanding of these social and industrial conditions is essential to a sympathetic appreciation of the position and attitude of the southern people during the trying years of the reconstruction period.

Practically all the codes were repealed as soon as the government of the southern states fell into the hands of the northern republicans; the others became dead letters and were never enforced.(1) Historically they are still interesting, not only on account of their importance as being an unique system of race discrimination, but also because of the argument they furnished at the time of their enactment for the radical reconstruction movement inaugurated by the thirty-ninth Congress.

1. Stephenson, Discrim. in Am. Law, 63.

BIBLIOGRAPHY

SOURCES

Appleton's Annual Encyclopaedia,
Vol.V. New York, 1866.

Blaine, J.G., Twenty Years of Congress, from Lincoln
to Garfield,
2Vols. Norwich, Conn., 1886.

Congressional Globe, 39th Congress, First Session,
Washington, 1866.

Dennett, J.R., The South As It Is,
The Nation, Vols. 1-2
Letters from a Special Correspondent.

Fleming, W.L., Documentary History of Reconstruction,
Political, Military, Social, Religious,
Educational, and Industrial,
1865 to the Present Time,
2Vols. Cleveland, 1907.

Contains a careful collection of documents, including quotations from some of the southern black codes, and also valuable personal testimony.

Gammel, H.P.N., Laws of Texas, 1822-1897,
11Vols. Austin, 1898.

McPherson, E., The Political History of the United States
of America during the Period of Reconstruction,
from April 15, 1865 to July 15, 1870,
Washington, 1875.

Contains a good summary of the black codes of several of the southern states.

Richardson, J.D., Compilations of Messages and Papers of the
Presidents of the United States.
10Vols. Washington, 1896-1899.

Schurz, C., Reminiscences of Carl Schurz,
3Vols. New York, 1908-1909.

Contains very good comments upon conditions in the South, and on the status of the freedmen in 1865.

Senate Executive Documents, 39th Congress, First Session
Washington, 1866.

Sumner, Charles, The Works of Charles Sumner,
15Vols. Boston, 1875-1883.

Tourgee, A.W., A Fool's Errand, By One of the Fools,
New York, 1880

Experiences of a carpet-bagger as a judicial officer in North Carolina.

SECONDARY MATERIAL

Blaine, J.G., Negro Suffrage,
North American Review, Vol.128; 275-277.

Chadsey, C.D., The Struggle between President Johnson
and Congress over Reconstruction,
Columbia Studies, Vol.VIII
New York, 1896.

Cox, S.S., Three Decades of Federal Legislation,
1855-1885,
Providence, 1885.

Dunning, W.A., A History of Reconstruction, Political
and Economic,
American Nation Series, Edited by A.B.Hart, Vol.XXII
New York, 1907.

Ficklen, J.R., History of Reconstruction in Louisiana
through 1868.
John Hopkins University Studies, Vol.28
Baltimore, 1910.

Fleming, W.L., Civil War and Reconstruction in Alabama,
New York, 1905.

Contains valuable account of conditions after the war.

Garner, J.W., Reconstruction in Mississippi,
New York, 1901.

Contains an excellent account of the black code as
well as of general conditions in Mississippi.

Hamilton, J.G.de R., Reconstruction in North Carolina,
New York, 1906.

Herbert, H.A., Why the Solid South? or, Reconstruction
and its Results.
Baltimore, 1890.





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