

## BLACK CODES 1865-66

"Black Codes" were legal statutes and constitutional amendments enacted by the ex-Confederate states following the Civil War that sought to restrict the liberties of newly freed slaves, to ensure a supply of inexpensive agricultural labor, and maintain a white dominated hierarchy.<sup>1</sup> However, the history of Black Codes did not begin with the collapse of the Confederacy.<sup>2</sup> Prior to the Civil War, southern states enacted Slave Codes to regulate the institution of slavery.<sup>3</sup> Furthermore, northern, non-slave holding states enacted laws to limit the black political power and social mobility.<sup>4</sup> For example, in 1804, Ohio enacted laws prohibiting free blacks from immigrating into the state.<sup>5</sup> In 1813, the State of Illinois enacted a law banning free blacks outright from immigrating into the State.<sup>6</sup>

Black Codes adopted after the Civil War borrowed elements from the antebellum slave laws and from the laws of the northern states used to regulate free blacks.<sup>7</sup> Some Black Codes incorporated morality clauses based on antebellum slave laws into Black Code labor laws. For example, in Texas, a morality clause was used to make it crime for laborers to use offensive language in the presence of their employers, his agents, or his family members.<sup>8</sup> Borrowing from the Ohio and Illinois codes, Arkansas enacted an ordinance banning free blacks from immigrating into the state.<sup>9</sup>

In the end, the Black Codes were largely extinguished when Radical Republican Reconstruction efforts began in 1866-67, and with the passage of the Fourteenth Amendment and civil rights legislation.<sup>10</sup> Though the statutory lives of the Black Codes were short-lived, they are significant in that they served as precursors to the Jim Crow laws and social segregation among whites and blacks.<sup>11</sup> For example, Arkansas passed a law prohibiting black children from

attending school with children.<sup>12</sup> The Texas legislature enacted a law requiring railroad companies to set aside a passenger car for black passengers.<sup>13</sup>

While each ex-Confederate state enacted its own set of Black Codes, all of them shared certain features. First, they defined the term "person of color." Second, they prevented blacks from voting, holding office, or serving on juries. Third, they prevented blacks from serving in state militias. Fourth, they mandated for poor, unemployed persons (usually blacks) be arrested for vagrancy or bound as apprentices. Fifth, they mandated and regulated labor contracts between whites and free blacks. Sixth, they prohibited interracial marriages between whites and blacks.

All of the Black Codes defined what it meant to be a "person of color." However, these definitions were far from consistent. The Virginia legislature decreed that any person with one-fourth Negro blood in their veins was a person of color.<sup>14</sup> Georgia set the limit at one-eighth.<sup>15</sup> Still yet, the Tennessee legislature declared anyone having any Negro blood at all made an individual a person of color.<sup>16</sup>

The leaders of the ex-Confederacy made no qualms about their desire to keep blacks out of the political process. To this end, all of the ex-Confederate states prevented blacks from voting, holding political office, or serving in the state militias. This view had some measure of support in the North. In an article appearing in the New York Times, an author wrote, "The denial of suffrage to the freedmen, we believe, cannot be made a bar to admission of the Southern representatives, for the reason is that it is no real denial of justice. No man, white or black, has title to a civil power which he has not the intelligence to exercise."<sup>17</sup>

The Black Codes also prohibited blacks from serving in state militias. A principle reasons for these laws was probably a concern for insurrections and armed violence. However, a

corollary concern was that the presence of armed black soldiers encouraged undesirable attitudes in blacks. For example, in Florida, the state legislature drafted resolution requesting that black Union Army troops be withdrawn from their lands because their presence alarmed whites and encouraged insubordination among blacks.<sup>18</sup> Florida also passed laws prohibiting blacks from carry fire-arms or weapons.<sup>19</sup> If blacks wanted to own a gun, these laws often required blacks to obtain a license from the county judge and to have witnesses, usually white, vouch for their non-violent temperament.<sup>20</sup>

The vagrancy statutes were particularly harsh on freed blacks. While these statutes did not specifically target blacks in their language, they were predominately applied to blacks because of their impoverished condition.<sup>21</sup> In general, vagrancy statutes stipulated that any person a law enforcement officer or judge deemed to be unemployed and not owning property could be arrested and charged as a vagrant. It was easy to arrest blacks for violating vagrancy laws because the freed blacks lacked wealth and land owing to their previous condition of servitude, and to a lesser extent because the federal government reneged on its promise to deliver forty acres and a mule to 40,000 freed slaves.<sup>22</sup>

Once arrested and convicted of vagrancy, a person would be forced into conditions nearly identical to slavery. They were either hired out to private individuals or forced to work public projects. They were not paid for their labor. In Florida, disobedience, tardiness, or running away could be punished by imprisonment, standing in the pillory or stockade, or flogging.<sup>23</sup> Punishment by flogging usually consisted of receiving 39 lashes, a number frequently used when flogging slaves.<sup>24</sup>

Apprentice statutes functioned along with vagrancy statutes to ensure a steady supply of inexpensive labor. Under apprentice laws, minors of poor parents, or parents deemed to be

vagrants, could be taken as wards of the court and bound out to a master for varying lengths of time. Males were usually bound until the age of twenty-one, females until the age of eighteen. Apprentices frequently had no choice in the trade they would be required to learn, however, masters were required to teach the apprentice a trade, provide for the apprentice's living expenses, and provide the apprentice with a basic elementary level education. Some states even required the master to provide the apprentice with a monetary gift when the apprenticeship expired. Apprentices who violated apprentice laws by running away being disobedient to their master could be imprisoned, flogged, or forced to pay damages.

The regulation of labor contracts with blacks was another hallmark of the Black Codes. In article appearing in a popular magazine of the time, a Southern author wrote of black people, "We should be satisfied to compel them to engage in coarse, common manual labor, and to punish them for dereliction of duty or non fulfillment of their contracts with such severity, as to make them useful, productive laborers."<sup>25</sup> Under the Black Code labor regime, blacks were free to work for any one they chose, but they were required to sign contracts that bound them to the employer at least a year. Once the contract was signed, blacks could not get out of the contract unless a court first declared the master violated the contract first. This deprived blacks of the opportunity to accept better paying jobs if they arose, and insured landowners had a steady supply of cheap labor.

Punishment for blacks who broke their labor contracts included payment of damages, imprisonment. In states like Florida, it also included standing in the stockade or floggings. In Florida, behavior that constituted a breach of the contract included laziness, failure to appear for work, using offensive language with the employer, or running away.<sup>26</sup> Most of the slave codes

also made it a criminal offense for anyone to entice or encourage a black laborer to break an existing labor contract.

Criminal laws also played an important aspect in the Black Codes. To varying degrees, ex-Confederate states passed criminal laws that prohibited petty that blacks were more likely to commit due to their immediate condition. For example, the Louisiana Penal Codes specifically criminalized trespassing on plantations.<sup>27</sup> Because free blacks often had no place to live other than on their previous master's plantation, they were more likely to be arrested under these statutes.

Penal Codes also specifically targeted blacks by inflicting harsher punishments for some crimes than whites convicted of the same crime. Unequal punishment was important for keeping blacks in a condition of servitude.<sup>28</sup> For example, a North Carolina statute made it a capital offense for a black person to assault a white woman with intent to rape.<sup>29</sup>

Finally, the Black Codes uniformly prohibited interracial marriages between blacks and whites. For example, in Texas anti-interracial marriage laws called for the punishment of both spouses with a fine, imprisonment or both.<sup>30</sup> It was a criminal offense, as it was in Georgia, for anyone to knowingly marry a white and black person.<sup>31</sup> And frequently county clerks were required to record marriages of blacks and whites in separate registries.

Conversely, the Black Codes also uniformly recognized black marriages and the legitimacy of children born to black parents. However, many Black Codes made it a criminal offense under adultery and fornication laws for blacks to live together without getting married or registering as a married couple with the county clerk. These statutes were frequently applied to blacks living in rural areas who were living together as result of their impoverished condition.<sup>32</sup>

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<sup>1</sup> See BLACK'S LAW DICTIONARY 163 (7th ed. 1999). See also Joe Louis Caldwell, *Black Codes*, in ENCYCLOPEDIA OF AFRICAN-AMERICAN CIVIL RIGHTS 50-51 (Charles D. Lowery & John F. Marszalek eds., 1992).

<sup>2</sup> Wikipedia, *Black Codes*, available at [http://en.wikipedia.org/wiki/Black\\_codes](http://en.wikipedia.org/wiki/Black_codes) (last visited April 11, 2005).

<sup>3</sup> See BLACK'S LAW DICTIONARY 163 (7th ed. 1999).

<sup>4</sup> Wikipedia, *Black Codes*.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> An Act regulating Contracts of Labor, ch. 130 § 9 (Texas 1866).

<sup>9</sup> Ordinances of the Convention 29 (Ark. 1865).

<sup>10</sup> Caldwell, *Black Codes*.

<sup>11</sup> *Id.*

<sup>12</sup> An Act to declare the rights of persons of African descent, No. 35 § 5 (Ark. 1867).

<sup>13</sup> An Act requiring Railroad Companies to provide convenient accommodations for Freedmen, ch. 103, § 1 (Tex. 1866).

<sup>14</sup> An ACT to amend and re-enact the 9th section of chapter 103 of the Code of Virginia for 1860, defining a Mulatto, providing for the punishment of Offences by Colored Persons, and for the admission of their Evidence in Legal Investigations ; and to repeal all Laws in relation to Slaves and Slavery, and for other purposes, ch. 17 § 1 (Va. 1866). February 27, 1866.

<sup>15</sup> An Act to define the term "persons of color," and to declare the rights of such persons, No. 250 § 1 (Ga. 1866).

<sup>16</sup> An Act to define the term "Person of Color," and to declare the rights of such persons, ch. 56 § 1 (Tenn. 1866).

<sup>17</sup> *The Progress of Reconstruction*, NEW YORK TIMES, Oct. 3, 1865, available at ProQuest Historical Newspapers.

<sup>18</sup> Resolution, No. 18 (Fla. 1865).

<sup>19</sup> An Act prescribing additional penalties for the commission of offences against the State, and for other purposes, ch. 1,466, No. 3 § 12 (Fla. 1866).

<sup>20</sup> *Id.*

<sup>21</sup> Caldwell, *Black Codes*.

<sup>22</sup> See *id.* See also Dan T. Carter, *Emancipation*, in DICTIONARY OF AFRO-AMERICAN SLAVERY 218 (Randall M. Miller & John David Smith eds. 1988).

<sup>23</sup> An Act to punish Vagrants and Vagabonds, ch. 1,467. No. 4 § 1 (Fla. 1865).

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<sup>24</sup> See Whittington B. Johnson, *Punishments*, in *DICTIONARY OF AFRO-AMERICAN SLAVERY* 604 (Randall M. Miller & John David Smith eds. 1988).

<sup>25</sup> *What's to be Done with the Negroes?* DEBOW'S REV, June 1866, at 577, available at ProQuest Historical Newspapers.

<sup>26</sup> An Act in relation to Contracts of Colored Persons, ch. 1,469. No. 7 § 1 (Fla. 1865).

<sup>27</sup> An Act: To Prevent Trespassing, No. 11 (La. 1865)

<sup>28</sup> Gabriel Mendes, *Black Codes in the United States*, *AFRICANA: THE ENCYCLOPEDIA OF THE AFRICAN AND AFRICAN AMERICAN EXPERIENCE* 249 (Kwame Anthony Appiah & Henry Louis Gates, Jr. eds. 1999).

<sup>29</sup> An act concerning negroes and persons of color or of mixed blood, ch. 40 § 11 (N.C. 1866).

<sup>30</sup> An act to define and declare the rights of persons lately known as slaves, and free persons of color, ch. 128 § 2 (Tex. 1866)

<sup>31</sup> An Act to carry into effect the ninth clause of the first section of the fifth article of Constitution, Title 31, No. 254 §§ 9, 10 (Ga. 1866).

<sup>32</sup> Mary Frances Barry, *Judging Morality: Sexual Behavior and Legal Consequences in the Late Nineteenth Century South*, *AFRICAN AMERICAN LIFE, 1861-1900, BLACK SOUTHERNERS AND THE LAW, 1865-1900* v. 12 839 (Donald G. Nieman ed.).