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The Southern “Black Codes” of 1865-66

The end of the Civil War marked the end of slavery for 4 million black Southerners. But the war also left them landless and with little money to support themselves. White Southerners, seeking to control the freedmen (former slaves), devised special state law codes. Many Northerners saw these codes as blatant attempts to restore slavery.

Five days after the Civil War ended, President Abraham Lincoln was shot. He died on April 15, 1865, and Vice President Andrew Johnson assumed the presidency. The task of reuniting the nation fell on his shoulders. A Southerner, Johnson favored readmitting the Southern states as quickly as possible into the Union. He appointed military governors who held complete power in the former Confederate states until new civilian governments could be organized.

Little thought had been given to the needs of the newly emancipated slaves. Shortly before the end of the war, Congress created the Freedmen’s Bureau. It furnished food and medical aid to the former slaves. It also established schools for the freedmen. By 1870, a quarter million black children and adults attended more than 4,000 of these schools in the South.

The Freedmen’s Bureau also helped the former slaves in the workplace. It tried to make sure that the former slaves received fair wages and freely chose their employers. The bureau created special courts to settle disputes between black workers and their white employers. It could also intervene in other cases that threatened the rights of freedmen.

White Southerners resented being ruled by Union military governors and Freedmen’s Bureau officials. They sought to restore self-rule. During the summer and fall of 1865, most of the old Confederate states held constitutional conventions. President Johnson’s reconstruction plan permitted only white persons to vote for convention delegates or to participate in the framing of the new state governments. Not surprisingly, none of the state conventions considered extending the right to vote to the freedmen. South Carolina’s provisional governor declared at his state constitutional convention that “this is a white man’s government.”

By the end of the year, most of the South had held elections under the new state constitutions. Often, ex-Confederate leaders won elections for state government offices and for U.S. Congress.

The newly formed state legislatures quickly authorized many needed public projects and the taxes to pay for them. Among these projects was the creation, for the first time in the South, of free public education. But the public schools excluded black children.

The state legislatures also began to pass laws limiting the freedom of the former slaves. These laws mirrored those of colonial times, which placed severe restrictions on both slaves and emancipated blacks. Neither of these groups could vote, serve on juries, travel freely, or work in occupations of their choice. Even their marriages were outside the law.

The white legislators saw little reason not to continue the tradition of unequal treatment of black persons. An editorial in the Macon, Georgia, *Daily Telegraph* reflected the widely held opinion of the white South at this time: “There is such a radical difference in the mental and moral [nature] of the white and black race, that it would be impossible to secure order in a mixed community by the same [law].”

White Southerners also feared that if freedmen did not work for white landowners, the agricultural economy of the South would collapse. During the last months of 1865, a rumor spread among freedmen: The federal government was going to grant “40 acres and a mule” to every ex-slave family on Christmas Day. Although the federal government had confiscated some Confederate lands and given them to freed slaves, it never planned to do this on a massive scale. Nonetheless, expecting their own plots of land, blacks in large numbers refused to sign work contracts with white landowners for the new year. At the same time, Southern whites passed around their own rumor that blacks would rise in rebellion when the free land failed to appear on Christmas Day.

All these economic worries, prejudices, and fears helped produce the first Black Codes of 1865. These codes consisted of special laws that applied only to black persons. The first Black Code, enacted by Mississippi, proved harsh and vindictive. South Carolina followed with a code only slightly less harsh, but more comprehensive in regulating the lives of “persons of color.”

The South Carolina Black Code

South Carolina's Black Code applied only to "persons of color," defined as including anyone with more than one-eighth Negro blood. Its major features included the following:

1. Civil Rights

The Southern Black Codes defined the rights of freedmen. They mainly restricted their rights. But the codes did grant black persons a few more civil rights than they possessed before the Civil War. South Carolina's code declared that "persons of color" now had the right "to acquire, own and dispose of property; to make contracts; to enjoy the fruits of their labor; to sue and be sued; and to receive protection under the law in their persons and property." Also, for the first time, the law recognized the marriages of black persons and the legitimacy of their children. But the law went on to state that, "Marriage between a white person and a person of color shall be illegal and void."

2. Labor Contracts

The South Carolina code included a contract form for black "servants" who agreed to work for white "masters." The form required that the wages and the term of service be in writing. The contract had to be witnessed and then approved by a judge. Other provisions of the code listed the rights and obligations of the servant and master. Black servants had to reside on the employer's property, remain quiet and orderly, work from sunup to sunset except on Sundays, and not leave the premises or receive visitors without the master's permission. Masters could "moderately" whip servants under 18 to discipline them. Whipping older servants required a judge's order. Time lost due to illness would be deducted from the servant's wages. Servants who quit before the end date of their labor contract forfeited their wages and could be arrested and returned to their masters by a judge's order. On the other hand, the law protected black servants from being forced to do "unreasonable" tasks.

3. Vagrancy

All Southern Black Codes relied on vagrancy laws to pressure freedmen to sign labor contracts. South Carolina's code did not limit these laws to unemployed persons, but included others such as peddlers and gamblers. The code provided that vagrants could be arrested and imprisoned at hard labor. But the county sheriff could "hire out" black vagrants to a white employer to work off their punishment. The courts customarily waived such punishment for white vagrants, allowing them to take an oath of poverty instead.

4. Apprenticeship

Southern Black Codes provided another source of labor for white employers—black orphans and the children of vagrants or other destitute parents. The South Carolina code authorized courts to apprentice such black children, even against their will, to an employer until age 21 for males and 18 for females. Masters had the right to inflict moderate punishment on their apprentices and to recapture runaways. But the code also required masters to provide food and clothing to their apprentices, teach them a trade, and send them to school.

5. Courts, Crimes, and Punishments

South Carolina's Black Code established a racially separate court system for all civil and criminal cases that involved a black plaintiff or defendant. It allowed black witnesses to testify in court, but only in cases affecting "the person or property of a person of color." Crimes that whites believed freedmen might commit, such as rebellion, arson, burglary, and assaulting a white woman, carried harsh penalties. Most of these crimes carried the death penalty for blacks, but not for whites. Punishments for minor offenses committed by blacks could result in "hiring out" or whipping, penalties rarely imposed on white lawbreakers.

6. Other Restrictions

South Carolina's code reflected the white obsession with controlling the former slaves. It banned black people from possessing most firearms, making or selling liquor, and coming into the state without first posting a bond for "good behavior." The code made it illegal for them to sell any farm products without written permission from their white employer, supposedly to guard against stealing. Also, blacks could not practice any occupation, except farmer or servant under contract, without getting an annual license from a judge.

Congressional Reconstruction

The Mississippi and South Carolina Black Codes of 1865 provoked a storm of protest among many Northerners. They accused Southern whites of trying to restore slavery. Congress refused to seat Southerners elected under the new state constitutions. A special congressional committee investigated whether white Southern Reconstruction should be allowed to continue.

In the South, the Mississippi and South Carolina Black Codes never went into effect. The Union military governors and the Freedmen's Bureau immediately declared them invalid. Fearing that their self-rule was in jeopardy, the two states revised and moderated their codes. Christmas Day came without either the free land that freedmen had hoped for or the bloody rebellion that whites had dreaded. Instead, as the new year began, freedmen all over the South signed labor contracts and

rebellion that whites had created. Instead, as the new year began, freedmen all over the South signed labor contracts and went back to work.

Under the less tense conditions in 1866, most other former Confederate states wrote Black Codes that paid more attention to the legal equality of whites and blacks. But the belated efforts of the white Southerners to treat the freedmen more fairly under the law came too late.

Along with the Black Codes, other events helped alter the course of Reconstruction: The 14th Amendment passed, and a new Congress hostile to the South was elected. This Congress took control of Reconstruction. When President Johnson vetoed its Reconstruction legislation, Congress overrode his vetoes. The battles with Johnson led ultimately in 1868 to his impeachment by the House, the first impeachment of a president in American history. (The Senate failed to convict him by one vote.)

Under the direction of Congress, most Southern states held new constitutional conventions in 1867–68. This time the freedmen voted and participated. The resulting new state constitutions guaranteed the right of black adult males to vote and run for public office. For the first time, some blacks won election to Southern state legislatures and to Congress. By 1868, most states had repealed the remains of discriminatory Black Code laws.

But Reconstruction did not last long. By 1877, it was dead. The North had lost interest in helping Southern blacks. Many factors had helped kill Reconstruction: economic troubles in the country, a more conservative consensus within the nation, a general feeling in the country that Reconstruction had failed, the resurgence of the Democratic party, and a growing respectability for racist attitudes.

Southern states began trying to end black voting. By 1910, all Southern states had excluded blacks from voting. In the 1890s, Southern states enacted a new form of Black Codes, called “Jim Crow” laws. These laws made it illegal for blacks and whites to share public facilities. This meant that blacks and whites had to use separate schools, hospitals, libraries, restaurants, hotels, bathrooms, and drinking fountains. These laws stayed in effect until the 1950s and 1960s, when the civil rights movement launched an all-out campaign against them. Ultimately, the U.S. Supreme Court declared these laws unconstitutional, and the U.S. Congress passed Civil Rights legislation ensuring equal rights for all citizens.

For Discussion and Writing

1. Why did white Southerners believe that a separate code of laws applying only to “persons of color” was necessary?
2. Northerners protested that the Black Codes of South Carolina and other Southern states attempted to restore slavery. Do you agree or disagree? Why?
3. Do you think that the U.S. government should have confiscated lands owned by Confederate leaders to provide “40 acres and a mule” to the landless freedmen? Why or why not?

For Further Information

Black Codes

“Black Codes Make Way for Jim Crow” from the World African Network Online

“ACLU Briefing Paper on Racial Justice” includes a section on the Black Codes.

Reconstruction

Scartoons: [Racial Satire and the Civil War](#) is part of the Capitol Project of the American Studies Program at the University of Virginia.

“The Freedmen’s Bureau” by W. E. B. Du Bois in *The Atlantic Monthly* 1901

“Reconstruction” by Frederick Douglass in *The Atlantic Monthly* 1866

[Freedmen and Southern Society Project](#)

ACTIVITY: “Equal Protection of the Laws”

The 14th Amendment, ratified in 1868, attempted to prevent discriminatory state laws such as those that made up much of the Southern Black Codes of 1865–66. Section 1 of the 14th Amendment reads, in part:

All persons born or naturalized in the United States . . . are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In this activity, students will compare the requirements in Section 1 of the 14th Amendment with the laws included in the South Carolina Black Code of 1865.

Form six groups, each to evaluate one area in the South Carolina Black Code described in the article. Group members should first read Section 1 of the 14th Amendment. Then they should decide which parts of their Black Code area seemed to violate Section 1 provisions. Finally, each group should report its conclusions to the rest of the class.