

THE SOUTH CAROLINA BLACK CODE AND ITS LEGACY

by

Larry McIntyre

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Approved by:

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Dr. John David Smith

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Dr. James K. Hogue

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Dr. Shepherd W. McKinley



## ABSTRACT

LARRY MCINTYRE. The South Carolina Black Code and its legacy. (Under the direction of DR. JOHN DAVID SMITH)

In December 1865 the South Carolina State Legislature ratified a series of laws designed to control the social and economic futures of the freedpeople. Informally known as the Black Code, South Carolina's white leadership claimed these laws protected blacks from their own naiveté in their newfound freedom. Rather, the Black Code relegated African Americans to inferiority and perpetuated the long-standing belief in white supremacy that permeated the South.

The South Carolina Black Code limited the freedmen's civil rights, regulated their employment opportunities, and attacked the details of their most intimate personal relationships. Despite the challenges they faced, African American's did not quietly accept their new quasi-slave status. In South Carolina, the freedmen voiced their concerns regarding the new laws and became active in state politics. African Americans embraced their opportunity to create positive political change, which along with other factors ultimately led to the demise of the Black Code. With support both locally and nationally, black South Carolinians soon gained rights previously denied to them. In less than a year's time, the South Carolina Black Code ceased to exist as a result of state and federal legislation.

The significance of the South Carolina Black Code was not as much in the letter of the laws themselves, but rather in the message the creation of the code sent to both the freedpeople and their supporters. To South Carolina's white leadership, though free,

African Americans were not their equals. Moreover, the Black Code established precedent for future laws designed to discriminate against African Americans. The Black Code created a foundation for antebellum-like hostilities against former slaves in the post-bellum South. Segregation and violence ensued and fostered a legacy that lasted for almost a century.

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## CHAPTER 1: INTRODUCTION

Within roughly a year after the end of the Civil War and the freeing of four million slaves, all eleven states of the former Confederacy ratified laws specifically designed to regulate the affairs of African Americans. These so-called “Black Codes” varied in severity from state to state, but in general, those state legislatures that enacted laws first also possessed the more discriminatory codes. In the fall 1865 four southern states ratified Black Codes, the most notorious of which came from Mississippi and South Carolina. The other seven former Confederate states ratified their codes throughout the first part of 1866. According to historian Theodore Brantner Wilson, with the exception of Florida, most of these codes were deemed less harsh than the codes passed the previous year.<sup>1</sup>

Mississippi was the first state to ratify its Black Code that Wilson described as “designed to drive the Negroes back to the land and compel them to work.”<sup>2</sup> South Carolina’s code followed shortly thereafter and was largely considered by Wilson to be “more detailed, more comprehensive, and, in some respects, more discriminatory” when compared to Mississippi’s code.<sup>3</sup> Many white South Carolinians believed the code represented a solution to how African Americans would fit into southern society

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<sup>1</sup> Theodore Brantner Wilson, *The Black Codes of the South* (Tuscaloosa: University of Alabama Press, 1965), 96.

<sup>2</sup> *Ibid.*, 66.

<sup>3</sup> *Ibid.*, 71.

following emancipation--what whites often referred to as the “Negro Problem.” For the freedpeople and their supporters, the South Carolina Black Code represented an attempt by southern whites to keep blacks in a condition as close to slavery as possible.

In 1860 African Americans comprised 58.6% of the total population in South Carolina.<sup>4</sup> The vast majority of these men and women were slaves. Following emancipation blacks continued to represent the majority of the state’s population with the highest concentrations of freedpeople found in the low-country and coastal regions. With so many former slaves residing within the state, South Carolina’s white leadership believed it was vitally important to enact legal measures to control African Americans. Whites justified their intentions as an effort to regain economic and social stability following four years of war. They also feared the potential of racial hostility that blacks might enact against their former oppressors. Many politically influential white men claimed that the Black Code protected the freedmen against their own naiveté, granted blacks legal rights that were previously denied to them, and stabilized the state’s labor force. In reality, the code kept blacks in a position of legal inferiority when compared to whites and left the freedmen in a slave-like status. The Black Code also created precedents for future laws that discriminated against African Americans well into the twentieth century.

The relevant historiography of the Blacks Codes is limited, as many southern historians include only a brief analysis of the laws within their broader study of Reconstruction. Few detailed analyses exist that focus solely on the southern Black Codes and fewer still concentrate on the code of any single state such as the South

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<sup>4</sup> Joseph C.G. Kennedy. *Preliminary Report on the Eighth Census* (Washington: Government Printing Office, 1862), 280.



Carolina Black Code. Despite this gap in the historiography of the codes, the existing research provides a strong foundation for a more robust and focused examination on the topic.

Early in the twentieth century, Columbia University professor William Archibald Dunning influenced a “racialized interpretation” of Reconstruction.<sup>5</sup> Dunning often sympathized with southern whites and portrayed African Americans as inferior. In *Reconstruction Political and Economic, 1865-1877* (1907) Dunning cynically addressed the response of northerners to the Black Codes. Dunning noted that “To a distrustful northern mind such legislation could very easily take the form of a systematic attempt to regulate the freedmen to subjection only less complete than that from which the war had set them free.”<sup>6</sup> Rather, Dunning argued that the codes were “far from embodying the spirit of defiance towards the North” and instead represented an “attempt to bring some sort of order out of the social and economic chaos” that resulted from war and emancipation.<sup>7</sup> Collectively the work of Dunning and his protégés became known as the “Dunning School” of Reconstruction historiography. Despite the racial bias these men often exhibited, the work of the Dunning School set the bar with respect to methodology and research that future scholars aimed to achieve. In this respect, the contributions of Dunning and his students in the field of Reconstruction, including his research on the southern Black Codes, remains significant.

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<sup>5</sup> Bruce Baker and Brian Kelly, ed., *After Slavery; Race, Labor, and Citizenship in the Reconstruction South* (Gainesville: University Press of Florida, 2013), 6.

<sup>6</sup> William A. Dunning, *Reconstruction Political and Economic, 1865-1877*, in *The American Nation: A History*. ed. Albert Bushnell Hart, LL.D. (New York: Harper & Brothers, 1907), 57.

<sup>7</sup> *Ibid.*, 58.

Francis Butler Simkins and Robert Hilliard Woody's *South Carolina During Reconstruction* (1932) was among the early works to largely break out of the mold of the Dunning School. Although the authors appeared at times to sympathize with postwar white southerners, they also provided a largely objective examination of the social and economic effect of Reconstruction on both whites and African Americans in the state. The authors argued that the South Carolina Black Code did not make practical sense. Rather than restoring order to the region following the Civil War, the Black Code merely antagonized the relationships between whites and blacks, which made interracial associations more difficult.

Likely no scholar before or since confronted the racial bias of the Dunning School more directly than W.E.B. Du Bois. In his groundbreaking work *Black Reconstruction in America, 1860-1880* (1935) Du Bois challenged the intent of the code, referring to it as an "indisputable attempt" on the part of white southerners to re-enslave African Americans while at the same time reestablishing the slave trade under the "guise of vagrancy and apprenticeship laws."<sup>8</sup> The quintessential revisionist Reconstruction scholar of his day, Du Bois not only gave blacks a voice to tell their story when the current historiography generally did not, but he also paved the way for all future revisionist historians.

The Civil Rights movement of the 1960s continued to influence the revisionist scholarship on the subject of Reconstruction that Du Bois pioneered. Rather than the more traditional top down approach of analyzing historical events from the perspective of social or economic elites, more historians began considering history from the viewpoint

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<sup>8</sup> W.E.B. Du Bois, *Black Reconstruction in America, 1860-1880* (1935; reprint, New York: Free Press, 1992), 167.

of the lower classes. Joel Williamson's *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (1965) represents a classic example of what many historians now refer to as historiography "from below." During his analysis, Williamson focused on the role of African Americans in society and politics during Reconstruction. Williamson discussed how white politicians in South Carolina fought to control the legal rights of African Americans through laws such as the Black Code. The author provided a balanced investigation on the Black Code and offered the perspectives of South Carolinians who supported the code as a means to maintain economic security and those who felt the codes were too harsh and impractical. Williamson's work effectively situated the Black Code within the larger context of interracial relationships in South Carolina and connected the code as one of many catalysts that led to the eventual ideological and physical separation of blacks and whites in the region.

In the same year Williamson composed his important analysis of African Americans during Reconstruction, Theodore Brantner Wilson produced the only monograph to date on the southern Black Codes. Wilson's *The Black Codes of the South* (1965) not only provided an analysis of the Black Codes from each of the eleven former Confederate states, but linked the creation of the codes to the changing relationship between blacks and whites in the South. What Wilson described as a "gray institution" existed during slavery and represented the relationship between southern whites and the free black class.<sup>9</sup> However, emancipation forever changed this relationship and what many whites believed to be the racial balance that previously existed. Wilson argued that the laws and social practices that whites developed to control the behavior of the expanding free black population prior to 1865 served as precedent for the creation of the

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<sup>9</sup> Wilson, *The Black Codes of the South*, 23.

Black Codes after emancipation.<sup>10</sup> In this context, the Black Codes represented a predictable progression of previously established laws that regulated African American behavior and relegated them to a position of inferiority within southern society.

Historians in the 1970s continued to define historical agency for those previously neglected members of society. Thomas Holt's *Black Over White: Negro Political Leadership in South Carolina During Reconstruction* (1979) explored the inter-relationships of African Americans during Reconstruction. Holt argued that rather than uniting as a single force against white repression, blacks were divided by class and even color, which limited their effectiveness to combat discriminatory laws like the Black Code. Holt noted that the code affected more than just the former slaves in South Carolina following emancipation. Rather, because the South Carolina Black Code applied to all African Americans, it also threatened to destroy the Charleston working class, which was largely formed of freeborn black artisans.

In *Been in the Storm so Long; The Aftermath of Slavery* (1979) Leon Litwack discussed, among other things, how former slaveholders attempted to legally control the African American labor force through legislation such as the Black Codes. Litwack largely focused on the codes of Mississippi and South Carolina and noted that while few white southerners questioned the intent of the codes, some challenged the timing of their implementation. A Mississippi planter noted that in regard to the code; "We showed our hand too soon...We ought to have waited till the troops were withdrawn, and our representatives admitted to Congress; then we could have everything our own way."<sup>11</sup>

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<sup>10</sup> Ibid., 41.

<sup>11</sup> Leon F. Litwack, *Been In The Storm So Long: The Aftermath of Slavery* (New York: Random House Inc., 1979), 368.

Several prominent white South Carolinians also voiced a similar opinion regarding the timing of the South Carolina Black Code.

Dan T. Carter's *When the War Was Over: The Failure of Self-Reconstruction in the South, 1865-1867* (1985) challenged the traditional interpretation that the appointed southern leadership following the war consisted solely of anti-northern secessionists who desired to return the South to the days of slavery. Carter instead argued that some southern politicians attempted economic reform that focused less on the traditional role of agricultural production and more on the development of the regions infrastructure, such as the building of railroads, manufacturing, and banking. However, Carter also argued that the continued racial bias of the South's white leadership motivated their unwillingness to accept social change. Laws like the Black Codes represented an inability of the South's white political leadership to elevate the freedmen from an inferior social status. By confining blacks to the role of unskilled laborer, these white men ultimately limited the region's economic progress.

Reconstruction further deteriorated the already unstable relationship that existed between African Americans and whites in the South. In *An Old Creed for the New South: Proslavery Ideology and Historiography, 1865-1918* (1985) historian John David Smith analyzed the correlation between race relations and politics in the South following the Civil War. Smith argued that after Appomattox southern whites maintained their proslavery mindset, which supported the paternalistic ideology that blacks needed to be controlled by whites. Smith analyzed important sections from the Black Codes of numerous southern states and described the South Carolina and Mississippi Black Codes as "the most notorious legal attempts to retain the substance of slavery during

Reconstruction.”<sup>12</sup> Smith also noted that despite the blatant discrimination of the codes, many white northerners “worried little over the human dimensions of neoslavery.”<sup>13</sup> Slavery or at least southern whites ability to control the freedmen remained fundamental to most whites in the South. This sentiment combined with northern white apathy towards the condition of the freedmen enabled the white political leadership in the South to establish laws like the Black Codes.

Few Reconstruction historians have received as much recognition for their work as Eric Foner. In his quintessential work, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (1988) Foner described the southern Black Codes, in part, as a means for politically influential white men to combat labor shortages in the South following emancipation by limiting the freedmen to plantation labor.<sup>14</sup> The author provided details of the codes for numerous states, paying particular attention to the highly discriminatory nature of the South Carolina code. Although Foner’s work represents what may be among the greatest works to date on Reconstruction, his analysis of the code comprised only a small part of his overall work. More recently, Foner’s *Forever Free: The Story of Emancipation & Reconstruction* (2006) more precisely identified the historical significance of the southern Black Codes. Despite being short-lived, the codes showed “the determination of the South’s white leadership to ensure that white

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<sup>12</sup> John David Smith, *An Old Creed for the New South: Proslavery Ideology and Historiography, 1865-1918* (1985; reprint, Carbondale: Southern Illinois University Press, 2008), 29.

<sup>13</sup> *Ibid.*, 69.

<sup>14</sup> Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: Harper & Row Publishers, 1988), 199.

supremacy and plantation agriculture survived emancipation.”<sup>15</sup> This determination would continue long after the nullification of the Black Codes in the form of the even more flagrant Jim Crow laws.

In 1996 Richard Zuczek wrote a stirring political history of Reconstruction in the Palmetto State. Zuczek’s *State of Rebellion: Reconstruction in South Carolina* analyzed the counter-revolution that took place following emancipation as the white leadership in the South Carolina fought to maintain white supremacy. The author argued that Reconstruction in South Carolina was a continuation of antebellum and Civil War hostilities against blacks. Paramilitary groups like the Ku Klux Klan used physical violence and intimidation tactics to attack the freedmen. Additionally, whites enacted laws like the Black Code, which legally discriminated against African Americans in an attempt to recreate a culture reminiscent of the antebellum era and control black labor. White South Carolinians simply refused to accept the freedmen as equals. Zuczek noted, “For the North, South Carolina’s black codes showed an obstinacy” on the part of the state’s white leadership following the Civil War that was “incompatible with defeat.”<sup>16</sup> Although the Black Code did not endure, it was one of several tactics used by white conservatives to regain political control of their state.

With few notable exceptions, most of the scholarship on the Black Codes provides a general and familiar overview of the topic. Even Wilson’s monograph, given its brevity, finds little room to go into great detail regarding the Black Code of any particular state, much less provide a comprehensive analysis of all of the southern states

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<sup>15</sup> Eric Foner, *Forever Free: The Story of Emancipation & Reconstruction* (New York: Vintage Books, 2006), 96.

<sup>16</sup> Richard Zuczek, *State of Rebellion: Reconstruction in South Carolina* (Columbia: University of South Carolina Press, 1996), 16.

codes. Nevertheless, the historiography remains fairly consistent. Historians largely agree that the Black Codes represented an attempt by influential southern whites to marginalize blacks within southern society.

This study does not refute this common conclusion. It is without a doubt that white southern politicians utilized the Black Codes to control African American labor and to relegate the freedmen to a subordinate social and economic position when compared to whites. However, the significance of the Black Codes went far beyond the legal power it gave to southern whites. The Black Codes not only exemplified white southerner's belief in racial superiority, but it also represented blatant disobedience of the federal laws that declared African Americans free following the Union's Civil War victory. In South Carolina for example, the white leadership believed that it controlled the legal rights of African Americans following emancipation, much as it had done during slavery. The Confederacy's defeat did not change this belief and white South Carolinians refused to accept the freedpeople as equals. Code supporters claimed paternalism towards the freedmen, but this justification failed to mask the true intention of the laws. Despite indications that the Black Code hindered South Carolina's reentry into the Union, the state's white leadership arrogantly, blatantly, and most publicly proceeded to disregard African American freedom by creating a legal declaration of white supremacy. It is in this light that this study builds upon the past historiography and provides a focused analysis of the South Carolina Black Code that details not only the code itself, but more importantly how these laws perpetuated the past and kept blacks in a form of quasi-slavery for generations to come.



## CHAPTER 2: BUILDING THE CODE

In 1866 South Carolina Judge A.P. Aldrich captured the essence of southern paternalism when he noted that, “No set of men understand the negro better than the Southern Planters and Gentlemen, and the negro has no better friends.”<sup>1</sup> Many white southerners believed that African Americans required continued supervision to prosper after emancipation. These men often compared the relationship between a master and his slave as similar to that of a father and his child. Unable to act on his own accord, the slave presumably depended on his master to provide the necessities of life. The master therefore governed his slaves based on what he believed constituted the best interests of his chattel.

To be clear, paternalism never represented equality for African Americans, for slavery by its nature was a relationship of unequals. Instead, “the slave who had most completely lost his manhood, who had lost confidence in himself, who stood before his master with hat in hand, head slightly bent, was best suited to receive the favors and affection of a patriarch.”<sup>2</sup> Without their freedom and without a political voice slaves had little opportunity to improve their social or economic situation.

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<sup>1</sup> A.P. Aldrich to L. Spooner, August 20, 1866, Lysander Spooner Papers, 1844-1886, New-York Historical Society, New York, NY.

<sup>2</sup> Kenneth Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage Books, 1956), 327.

The remnants of antebellum social hierarchies permeated the fabric of everyday life in the South following the Civil War. Many southern white politicians used paternalism as justification for their actions against the freedpeople. These men spoke of “protection” for African Americans and their legal rights following emancipation. They also believed that generations of bondage had left former slaves dependent on white men for their survival, child-like, ignorant and inexperienced in the skills needed to thrive in society. In September 1865 members of the South Carolina Constitutional Convention addressed the legal rights of freedmen and established a means for what they considered adequate legal protection for African Americans.

The Convention agreed that South Carolina’s provisional governor Benjamin Franklin Perry should appoint “a Commission, consisting of two persons, to prepare and submit a Code for the regulation of labor, and the protection and government of the colored population of the State.”<sup>3</sup> President Andrew Johnson appointed Perry provisional governor of South Carolina to mitigate potential Northern criticism to his Reconstruction plan because of Perry’s strong unionist views prior to the Civil War.<sup>4</sup> During the 1865 constitutional convention Perry even portrayed his paternalistic intent towards the freedmen and noted “The negro has lost the protection of his master, and he must now be protected by the law.”<sup>5</sup> Unfortunately for black South Carolinians, protecting their best interests was not Perry’s primary objective when he appointed Judge

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<sup>3</sup> *The Constitution of the State of South Carolina, Reports of the Various Standing Committees* (Columbia: Julian A Selby, 1865), 13.

<sup>4</sup> Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: Harper & Row Publishers, 1988), 187-188.

<sup>5</sup> *Journal of the Senate of the State of South Carolina* (Columbia: Julian A. Selby, 1865), 10.

David Lewis Wardlaw and well known lawyer Armistead Burt to chair the formation of the code commission.

Wardlaw was a young lawyer when he and Perry first met in 1824. Perry described the judge as a “statesman, wise and patriotic, governed by principle and the conviction of his own judgment. When he once took his position he was immovable.”<sup>6</sup> During his lengthy political career Wardlaw served as the speaker of South Carolina’s House of Representatives from 1836 to 1841. Judge Wardlaw also served as president of the 1865 Constitutional Convention representing Abbeville District.

Burt also had a distinguished political career and served as a delegate to the South Carolina House of Representatives from Abbeville District from 1834 to 1835. A prominent lawyer, Burt practiced law throughout the state and represented many former members of the Confederacy who sought political pardon following the Civil War. He personified southern tradition. In letters to his wife, among other things, Burt often inquired about the family’s domestic help. “Make my remembrances to the servants,” Burt declared. In another letter, Burt requested that his wife simply tell the servants “Howdy.”<sup>7</sup> Together, Wardlaw and Burt combined their political experience with the traditional southern belief that blacks represented a subordinated class as they authored their state’s Black Code.

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<sup>6</sup> U.R. Brooks, ed., *South Carolina Bench and Bar*, Volume I (Columbia: The State Company, 1906), 135.

<sup>7</sup> A. Burt to his wife, February 14, April 1, and July 28, 1866, Armistead Burt Papers, David M. Rubenstein Rare Book & Manuscript Library, Duke University, Durham, NC.

Burt wrote the social and economic provisions of the code, while Wardlaw largely focused on the “machinery of enforcement” of the new laws.<sup>8</sup> The men submitted the code to the South Carolina legislature during the extra congressional session, which lasted from October 25 to November 25, 1865. Analysis of the proposed legislation carried over to the regular congressional session that lasted until December 21, 1865. Governor Perry emphasized that the work of the legislature regarding the code was of the utmost importance. The legislature must pass any new laws by a majority vote before the end of the fall congressional session as the new constitution did not clearly empower a provisional governor to authorize legislation on his own accord.<sup>9</sup>

Burt and Wardlaw disguised the intent of the Black Code as legal protection and social improvement for African Americans. South Carolina legislators also attempted to redirect the blatant racial bias of the new laws by emphasizing the rights gained by freedmen by way of the code. The Black Code represented what white politicians claimed to be in the best interest of African Americans, which supported the idea of paternalism. At the same time the code controlled the legal, social, and economic status of blacks.

Paternalistic ideologies influenced the highest ranks of both the state and national governments. In October 1865 Perry wrote a letter to President Andrew Johnson remarking on the “most admirable code of laws for the protection of the colored persons

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<sup>8</sup> Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (Chapel Hill: The University of North Carolina Press, 1965), 72.

<sup>9</sup> *Journal of the Senate of the State of South Carolina* (Columbia: Julian A. Selby, 1865), 14.

in their rights and property.”<sup>10</sup> The two men exchanged six additional letters throughout the remainder of the year, four of which referred to South Carolina’s new code as “protecting” African Americans and their legal rights in light of their newfound freedom. Likewise, in December, President Johnson addressed the U.S. Senate and remarked on the significant progress being made in the Reconstruction of the southern states. Johnson emphasized that “the freedman will receive the protection to which he is justly entitled, and by means of his labor, make himself a useful and independent member in a community in which he has a home.”<sup>11</sup> Perry also noted that it was the duty of the state legislature to protect and govern the “freedmen and colored population who have been so suddenly released from slavery in their ignorance and destitution.”<sup>12</sup> Perry was not the only prominent South Carolinian who believed in the benefit of the code.

Many white politicians also focused closely on the supposed rights and legal protections given to African Americans by the new laws. However, the evidence suggests that white elites cared little for the protection of African American rights. Charleston’s Edmund Rhett wrote to Burt in the fall 1865 to express his opinion that the new laws be formulated in order to preserve South Carolina’s traditional labor and social systems. He described the overthrow of slavery as “unwise, imperious, and dangerous to our whole system, pecuniary and social” and emphasized the importance of maintaining

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<sup>10</sup> B.F. Perry to A. Johnson, October 27, 1865, in Paul H. Bergeron, ed., *The Papers of Andrew Johnson*, 14 vols. to date (Knoxville: The University of Tennessee Press, 1967-), 9:294.

<sup>11</sup> A. Johnson to the Senate of the United States, December 18, 1865, in James D. Richardson, ed., *Messages and Papers of the Presidents*, Volume VIII (New York: Bureau of National Literature, Inc. 1897), 3570-3571.

<sup>12</sup> *Journal of the Senate of the State of South Carolina* (Columbia: Julian A. Selby, 1865), 10.

the freedmen in a condition as close to slavery and as far from that of the white man as the law allowed. Rhett referred to a traditional southern stereotype that exchanging African American for white labor was impractical due to the white man's alleged inability to tolerate the harsh southern sun.<sup>13</sup>

In his correspondence with Burt, Rhett proposed four ideals that he considered critical to the future success of white South Carolinians. First, to prevent the possibility of labor shortages on white plantations, Rhett believed blacks should be prohibited from owning land. Second, Rhett argued the importance of strong vagrancy laws to prevent blacks from wandering, "lazy, lawless, thieving and vagrandizing." Third, Rhett proposed an act to require African Americans to sign labor contracts. Finally, Rhett recommended a legal means to enforce discipline. To mitigate criticism against what he claimed to be a public "prejudice against whipping," Rhett envisioned a system of punishment for African Americans that was similar to what the military used to discipline enlisted men. He argued this process would maintain equality in the types of punishments used against both whites and blacks.<sup>14</sup>

Burt and Wardlaw ultimately incorporated most of Rhett's suggestions into the South Carolina Black Code. Although in some instances the authors softened the more blatantly discriminatory language recommended by Rhett, the intent of the code clearly remained focused on controlling African Americans and maintaining white supremacy. While Rhett believed in the importance of regulating the legal rights of the freedpeople, he also stated that the first priority for South Carolina should be readmission into the Union. Regarding the necessity of race control, Rhett noted: "Of course this is no time to

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<sup>13</sup> E. Rhett to A. Burt, October 14, 1865, Burt Papers.

<sup>14</sup> Ibid.

do it. The question should not be broached until we are back in the Union. If it is now broached, it will only strengthen the Black Republican Party, and render the admission of the State difficult. After we are admitted, I believe there will be little difficulty: The administration will support us.”<sup>15</sup>

South Carolina politician James Hemphill shared Rhett’s concern about the timing of the Black Code. In November 1865 Hemphill wrote to his brother, the Reverend W.R. Hemphill regarding the code and noted that “the negro’s friends, will consider it too much a white man’s law, and that it does not sufficiently protect the freedmen against their former masters.”<sup>16</sup> Less than a month later, Hemphill again pessimistically confided to his brother: “I think there is no probability that our members of Congress will be admitted to their seats, and that we will be out in the cold for some time.”<sup>17</sup> The state’s reentry into the Union continued to be a prominent concern for South Carolina’s white leadership.

In a telegraph to President Andrew Johnson on November 27, 1865 Perry, inquired as to the appropriateness of sending South Carolina’s representatives to the House of Representatives in Washington.<sup>18</sup> Again on December 9, 1865, Perry eagerly asked Johnson when he would be allowed to take his seat as a recently elected member of

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<sup>15</sup> Ibid.

<sup>16</sup> J. Hemphill to W.R. Hemphill, November 7, 1865, Hemphill Family Papers, David M. Rubenstein Rare Book & Manuscript Library, Duke University, Durham, NC.

<sup>17</sup> J. Hemphill to W.R. Hemphill, December 1, 1865, Hemphill Papers.

<sup>18</sup> B.F. Perry to A. Johnson, November 27, 1865, in Bergeron, ed., *The Papers of Andrew Johnson*, Volume 9, 441.

the U.S. Senate from South Carolina.<sup>19</sup> The provisional governor also corresponded with Burt on the subject of the freedmen and reentry into the Union. In reference to Burt's code, Perry noted, "The President wishes to see that protection has been offered or guaranteed to the freedmen before the mandatory authorities are removed. Congress will require it before our Representatives are allowed to take their seats in that body."<sup>20</sup> Perry's position as provisional governor ended without resolution as to his political future.

Perry's successor, governor-elect James L. Orr also spoke publically about where he believed the freedmen best fit into South Carolina society. During his November 29, 1865, inaugural address to the South Carolina legislature, Orr emphasized the importance of African American labor to the state's economy. The soon-to-be governor echoed Rhett's position on the topic and noted: "The labor of every negro in the State is needed, if not to till the soil, in some other useful employment; for the culture of cotton and rice, and in all menial occupations, it is very doubtful whether any laborers in this country or in Europe can supply his place."<sup>21</sup> Orr's comments supported the spirit of the Black Code that the freedmen's future rest solely in manual labor and that white immigrants were not a suitable alternative for the job.

Reconstruction offered President Johnson an opportunity to begin the country's healing process, following four long years of bloody warfare. Unfortunately, Johnson's support of racist legislation like the South Carolina Black Code forever labeled him as a

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<sup>19</sup> B.F. Perry to A. Johnson, December 9, 1865, in Bergeron, ed., *The Papers of Andrew Johnson, Volume 9*, 501.

<sup>20</sup> B.F. Perry to A. Burt, October 15, 1865, Burt Papers.

<sup>21</sup> *Journal of the House of Representatives of the State of South Carolina* (Columbia: Julian A. Selby, 1865), 18.



southern sympathizer and enemy of the freedpeople. In South Carolina, supporters of African American rights believed provisional governor Perry held similar views to Johnson regarding the freedmen. Born in the tradition of slavery, South Carolina's Black Code emphasized an unwillingness of politically powerful southern whites to accept African Americans as a freedpeople.

Anti-black sentiment permeated the South during its antebellum years. However, southern ideologies about race extended much further into the past. In South Carolina, the inspiration for what might be the most notorious of the laws passed during Reconstruction, the Black Code, can be directly linked to the state's colonial era. Significant similarities existed between the South Carolina Black Code of 1865 and the South Carolina slave code of 1740. For many white South Carolina politicians, the Black Code represented a logical progression of old politics for new purposes.

## CHAPTER 3: THE CODE

The South Carolina Black Code consisted of four separate legislative acts that included an Act Preliminary to the Legislation Induced by the Emancipation of Slaves, an Act to Amend the Criminal Law, an Act to Establish District Courts, and an Act to Establish and Regulate the Domestic Relations of Persons of Color and to Amend the Law in Relation to Paupers and Vagrancy. Together, the code provided a legal means for South Carolina legislators to enforce racist policy that defined and codified the subordinate position African Americans held in society.

The code began with a brief, but meaningful Act Preliminary to the Legislation Induced by the Emancipation of Slaves. Introduced during the Extra Legislative Session by the House Judiciary Committee and ratified on December 19, 1865, the act emphasized some of the alleged benefits the code provided to African Americans. Under the new law, African Americans gained the right to own property, to make contracts, and to sue and be sued. Burt and Wardlaw emphasized the paternalistic intent that many white southerners believed justified the creation of the Black Code. The authors noted that the freedmen “received protection under the law in their persons and property.” Burt and Wardlaw also defined an individual’s race according to their ancestry . Section III of the law noted: “All free negroes, mullatoes, mestizos, all freedmen and freedwomen; and all descendants through either sex of any of these persons, shall be known as *persons of color*.” The law considered any person with “Caucasian blood seven-eighths or more

shall be deemed a white person.”<sup>1</sup> This racial distinction was significant because the law made it clear that while slavery no longer applied to persons of color, “such persons are not entitled to social and political equality with white persons.”<sup>2</sup> In *Black Over White: Negro Political Leadership in South Carolina During Reconstruction* (1979), historian Thomas Holt recognized the burden the codes placed on all African Americans, not just the freedmen. Concerning the South Carolina free black population, Holt wrote that “Conceding all the oppressions and indignities of their ‘quasi-free’ status under the old regime, the free Negroes had generally enjoyed an economic freedom in fact if not in law, that enabled many of them to live comfortably and in some cases wealthy lives.”<sup>3</sup> Emancipation “threatened the ex-slave with a serfdom only a notch or two above slavery” and eroded the rights of previously free blacks “without granting them political weapons with which to defend themselves.”<sup>4</sup> The first act of the Black Code made clear where African Americans stood in society when compared to whites and set the stage for more blatant and discriminatory laws to come.

Originating in the Senate, the Criminal Law bill initially failed to pass into law. The House Judiciary Committee reintroduced the bill and Governor Elect Orr subsequently ratified it on December 19, 1865. The Criminal Law Act defined a variety of felony and misdemeanor crimes. Additionally, the law established acceptable punishments for both whites and blacks based on the severity of the crime committed. In

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<sup>1</sup> *The Statutes at Large of South Carolina, Volume XIII* (1866; reprint, Columbia: Republican Printing Company, State Printers, 1875), 245.

<sup>2</sup> Ibid.

<sup>3</sup> Thomas Holt, *Black over White: Negro Political Leadership in South Carolina during Reconstruction* (Chicago: University of Illinois Press, 1979), 20.

<sup>4</sup> Ibid.

constructing the act, Burt and Wardlaw clarified those crimes and punishments that applied to “persons of color” only and those that applied to blacks and whites alike.

Felony offenses deemed without benefit of clergy or punishable by death included murder (unless in self-defense), rape, and poisoning with the intent to cause life-threatening injury to the victim. This category of crimes also applied to any African American convicted of having sexual relations with or who committed an assault with the “intent to ravish” a white woman.<sup>5</sup> Two notable capital offenses in the Criminal Act appeared directly influenced by the slave code text. Section XVII of the slave code noted that any slave accused of having raised or attempting to raise an insurrection should suffer death. In a similar manner, the Black Code addressed this felony offense in Section I of the Criminal Law Act although the authors did adjust the verbiage to apply to anyone, whites as well as blacks. The Black Code text distinguished between a successful and an attempted insurrection, classifying the latter a felony but not capital in nature.

Both the slave code of 1740 and Black Code indicated that in some cases the theft or destruction of agricultural goods and manufacturing products were punishable by death. In the case of the mid-eighteenth century slave code, capital crimes included those committed by non-whites who “shall willfully and maliciously burn or destroy any stack of rice, corn or other grain” or “set fire to, burn or destroy any tar kiln, barrels of pitch tar, turpentine or rosin.”<sup>6</sup> Moreover, the Black Code revealed an updated list of capital crimes that represented the agricultural shift towards cotton production in the South

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<sup>5</sup> *The Statutes at Large of South Carolina, Volume XIII*, 246.

<sup>6</sup> David J. McCord, ed., *The Statutes at Large of South Carolina, Volume VII* (Columbia: A.S. Johnson, 1840), 402.

around the turn of the nineteenth century. In 1794 with the help of Eli Whitney's improved cotton gin, slaves began processing cotton more quickly. This technological advancement paved the way for plantation owners to shift the cultivation from previous southern staples such as rice and indigo and to embrace the "culture of cotton."<sup>7</sup> The Black Code reflected the importance of cotton to the economic prosperity of the South. The code included the theft of a horse, mule, or cotton bale that was ready for sale, or aggravated burglary, theft, or arson committed within a parcel building such as a corn crib, rice pounding mill, threshing mill, mill-house, or gin-mill as capital offenses.<sup>8</sup>

A felony conviction with the benefit of clergy or not punished by death resulted when the accused intended to commit such malicious behavior as murder, rape or poisoning, but the crime resulted in serious bodily harm that was not considered life threatening. Likewise, non-aggravated theft within any structure deemed a dwelling or parcel to a dwelling carried a non-capital felony status. Livestock theft remained a felony offense. The code differentiated between the severities of punishments received for presumably less valuable animals. For example, the law deemed the theft of a horse or mule capital offenses, but stealing any bull, cow, steer, calf, sheep, hog, or goat did not warrant capital punishment. This was also the case for the destruction of cotton not baled for sale, corn, wheat, or other grain whose value was higher than ten dollars. The provision also included the theft of any crops directly from the field.<sup>9</sup>

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<sup>7</sup> Brian Schoen, *The Fragile Fabric of Union: Cotton, Federal Politics, and the Global Origins of the Civil War* (Baltimore: The Johns Hopkins University Press, 2009), 43.

<sup>8</sup> *The Statutes at Large of South Carolina, Volume XIII*, 246.

<sup>9</sup> *Ibid.*, 247.

Felony offenders faced a wide variety of punishments and race determined the punishment received. Section IV of the Criminal Law act clearly stated: “no punishment more degrading than imprisonment shall be imposed on a white person for a crime not infamous.”<sup>10</sup> Punishments for blacks included the possibility of transportation beyond state limits for a period of five years or imprisonment within a penitentiary or work farm for a period not less than three months, but not more than ten years. Additional punishments included hard labor, confinement, whipping, disqualification to vote (for up to twenty years), confinement in treadmill or stocks, or fines.

Misdemeanors included crimes such as attempted murder, rape, or poisoning that did not result in bodily injury. Less serious crimes, such as theft or larceny for items with a value of less than ten dollars, also fell within this category. Punishment for this wide classification of crimes also varied. For blacks only it included the potential for whipping or other corporal punishment, hard labor, or imprisonment.<sup>11</sup> African Americans could also receive any of the aforementioned punishments in combination as determined by the court. Conversely, whites only faced punishments up to, but no worse than imprisonment. Corporal punishment was also not an option when punishing whites.

By using terminology from the era of slavery, the Black Code represented an attempt to recreate a pre-emancipation social hierarchy in postwar South Carolina. The term “master” first appeared within the Criminal Law act as a means to describe a white employer of any person of color. Burt and Wardlaw formally defined the terms “servant and master” in the final act of the code as “All persons of color who make contracts for

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid., 248.

service or labor, shall be known as servants and those with whom they contract shall be known as masters.”<sup>12</sup>

Section X of the Criminal Law act introduced the notion that employed African Americans were not permitted to engage in certain activities without the written permission of their white masters. Reminiscent of slavery, these restrictions prohibited the sale of various food items such as corn, wheat, flour, numerous types of meats, or any farm produced item.<sup>13</sup> The courts levied fines on African Americans who failed to obtain proper written permission from their employer as well as whites who failed to verify that a person of color had obtained such permission from his or her master. African Americans who failed to make immediate payment on any fine levied against them faced an alternative and more serious sentence, such as corporal punishment. Any unauthorized white person who provided false documentation that gave permission to any African American to sell or purchase items could also be charged and punished accordingly. South Carolina’s slave code also prohibited the sale of any goods or commodities by blacks without written permission from their master, mistress or other person deemed liable for the slave’s care.<sup>14</sup>

Both the slave code and Black Code contained measures designed to regulate the whereabouts of non-whites. The slave code bluntly stated that “care be taken to restrain the wanderings and meetings of negroes and other slaves, at all times.”<sup>15</sup> Similarly, the postbellum Black Code required that all persons of color contract with two “freeholders”

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<sup>12</sup> Ibid., 274.

<sup>13</sup> Ibid., 249.

<sup>14</sup> McCord, *The Statutes at Large of South Carolina, Volume VII*, 409-410.

<sup>15</sup> Ibid., 410.

or landowners within twenty days of entering the state. Failure to do so resulted in a court-mandated expulsion beyond state lines.

Fear of insurrection likely guided the authors of the Black Code to outlaw African Americans from owning a firearm or other “weapon appropriate for purposes of war.”<sup>16</sup> Blacks could own a rifle or shotgun for hunting purposes, although this exception depended on obtaining the appropriate permission from a district judge or magistrate. Again, this provision within the Black Code mirrored the slave code text, which prohibited slaves to own or use firearms unless in the presence of a white person or after receipt of appropriate permission from his master, mistress, or overseer. The slave code also limited slaves’ use of firearms to hunting or protecting crops. African Americans who violated this law were fined, or in the event of non-payment, received corporal punishment. Following emancipation, blacks in South Carolina were also not permitted to be part of the state militia.

The Criminal Law act noted that a jury could acquit any person accused of a felony offense. A jury also had the right to show mercy in capital offenses involving one or more persons of color. Any persons convicted of a capital offense had the opportunity to appeal to the state governor for possible pardon.

The severity of punishments received and the arrest process itself further supported the legal inequity of blacks. For freedmen hard labor included work on public facilities such as roads, streets, or public works and could be enforced “without usual pain or restraint” or performed in a chain gang, with ball and chain, or other pain or

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<sup>16</sup> *The Statutes at Large of South Carolina, Volume XIII, 250.*



burden subject to the magistrate's ruling.<sup>17</sup> The law allowed corporal punishment methods similar to those used against slaves, such as whipping. Blacks also received harsher alternative punishments than whites did if they failed to pay a fine levied by the courts. Whites faced imprisonment equal to one day per dollar of fine unpaid, while persons of color earned one day of forced labor for each dollar of fine unpaid.<sup>18</sup> The code stated that any white person could arrest the offending party who committed a felony offense. The code also allowed any white person to arrest a person of color that committed a misdemeanor. Both situations suggested an increased legal power that came with having white skin. When a white person committed a misdemeanor against a black person, only a magistrate could issue a warrant for their arrest.

With the Act to Amend the Criminal Law complete and more regulatory changes soon to follow, South Carolina legislators needed a means to enforce their new code. Ratified on December 19, 1865, the third act of the Black Code established district courts to administer the new discriminatory laws. The District Court Act defined the operational guidelines and legal boundaries of the courts, as well as the duties of various court officers. The courts met monthly and tried a variety of civil and criminal cases that included minor offenses, aggravated misdemeanors, and clerigible felonies. The common factor in all of these cases was that they involved one or more persons of color. The courts tried the more serious, capital crimes involving African Americans quarterly. At neither the monthly nor the quarterly meetings did the District Courts oversee the trials of whites convicted of any felony against blacks, capital or otherwise. A Superior Court of Law held concurrent jurisdiction with the District Courts and tried all felony

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<sup>17</sup> Ibid., 252.

<sup>18</sup> Ibid., 252-253.

cases where the defendants were white. The Superior Court also tried all cases, felony or misdemeanor, when both legal parties were white. Distinct court systems based on the color of the defendant's skin implied the courts upheld the laws for whites and blacks differently.

Supporters of the Black Code emphasized the positive effects of the District Court act and used it as a political tool to support their argument that the code provided African Americans legal rights and protection in their newfound freedom. The act noted that African Americans gained the right to serve as witnesses or as character references in crimes that involved persons of color. Additionally, the law maintained the power and position of current magistrates and gave the district judge the authority to appoint additional community magistrates where needed to aid in the regulation of the freedmen's affairs. Magistrates had jurisdiction over small local disputes, controversies, and complaints involving one or more African American. Burt and Wardlaw again emphasized paternalism in the District Court Act. The act charged court magistrates with the "supervision of persons of color in their neighborhood, their protection, the prevention of their misconduct and depredations, and a cautious regard to the peace, health and safety of his neighborhood".<sup>19</sup>

The District Court Act permitted any individual accused of a crime as a person of color to appeal his or her racial classification. These "questions of color and caste" allowed the accused to dispute the actions of court officers that "would be proper toward a person of color and not proper toward a white person."<sup>20</sup> The law clearly indicated that race mattered and implied that whites would be treated better than African Americans in

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<sup>19</sup> Ibid., 263.

<sup>20</sup> Ibid., 264.

the court system. The court based its judgment to determine the race of an individual on a number of factors that included direct testimony related to the accused person's parentage and his reception in society.<sup>21</sup>

The final sections of the District Court Act defined the payments received by court officials. For example, a district attorney received payment for each individual conviction. Attorneys earned \$15.00 per conviction in a capital case, while non-capital felony and misdemeanor convictions paid \$10.00 and \$5.00, respectively. The representation of a court official for the trial of a question of color or caste gained the attorney \$20.00.<sup>22</sup> Court clerks also received payment for various journal entries, as did the sheriff for arrests made. In a court system controlled by whites, the establishment of a fee-for-service payment model promoted the exploitation of African Americans as whites profited.

The South Carolina legislature ratified the final act of the Black Code on December 21, 1865. Like the prior sections of the code, the Act to Establish and Regulate the Domestic Relations of Persons of Color and to Amend the Law in Relation to Paupers and Vagrancy also contained a limited number of improvements for African Americans that whites often focused on when they argued that the Black Code enhanced the legal rights of blacks. These provisions, in part, addressed the domestic relationships of the freedpeople. For example, the act legally recognized marriages between black men and women. The act also declared all African American children legitimate and therefore protected under the law. While these provisions were significant to black South Carolinians, they did not mitigate the numerous discriminatory aspects of the act or of the

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<sup>21</sup> Ibid., 265.

<sup>22</sup> Ibid., 266.

Black Code as a whole. Although the act recognized black marriages, it also declared any marriage between an African American and a white person or the marriage of an apprentice without permission from his or her master, illegal.

The final act of the South Carolina Black Code also established rigid guidelines regarding the employment opportunities available to African Americans, largely limiting them to manual labor. The law required freedmen to enter labor contracts that often favored white landowners and hindered the financial success of blacks. The law allowed African American parents to bind their children over the age of two as apprentices to any “respectable white or colored person who is competent to make a contract.”<sup>23</sup> Moreover, the code gave the District Courts the authority to create apprenticeship contracts for African American children whose parents were deceased or when the child’s parents were not teaching them habits of industry and honesty, were persons of bad character, vagrants, or convicted of a felony offense.<sup>24</sup> In this way, the Black Code again epitomized the definition of southern paternalism as it allowed the court system to control the futures of black children based on what white court officials perceived to be in African Americans best interests.

The apprenticeship clause required each master to teach his or her apprentice a trade or business and to instill integrity and honesty within them. The law also required a master to provide at least six weeks of schooling per year to his or her apprentice when a school that allowed black students was readily accessible. In return, the master received the right to profit from his apprentice’s labor, “inflict moderate chastisement and impose reasonable restraint upon his apprentice, and to recapture him if he departs from his

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<sup>23</sup> Ibid., 271.

<sup>24</sup> Ibid.

service.”<sup>25</sup> By comparison, the 1740 South Carolina slave code also addressed slave punishment in sections I and IV and the restraint of slaves in section XXV. The Black Code mandated that any artisan who desired an apprentice obtain a license from the District Court. African Americans required a separate license from the court to work as an artisan. As white South Carolinians governed the District Court system, they also controlled the availability of legal artisan apprenticeships which, again, largely confined African Americans to domestic and agricultural labor.

The last act of the code regulated the working and living conditions of African American servants. Servants worked from sunrise to sunset and assumed responsibility for property damage or lost work hours resulting from their negligence. The code also mandated that servants perform their daily tasks quietly and maintain order within their quarters. Like the slave code, the Black Code prohibited servants from working after dark or on Sundays. Masters also had the legal right to discipline servants who were less than eighteen years of age.

Several provisions within the Black Code emulated the rules that slaveholders enforced when managing their chattel. In *The Peculiar Institution* (1956) historian Kenneth Stampp noted a list of rules that planters often used for governing their slaves. These rules prohibited slaves from being out of their quarters after dark and leaving their master’s estate or selling items without permission. Masters also expected their slaves to remain orderly and set provisions to regulate slave marriages.<sup>26</sup>

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<sup>25</sup> *Ibid.*, 272.

<sup>26</sup> Kenneth Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage Books, 1956), 149-150.

The Black Code also required masters to assume responsibility to protect their servants both in person and property. Likewise, the code required a servant to protect his master, his master's family or property or the person or property of any of his master's servants when ordered to do so by his master. A master could initiate the termination of a service contract for willful disobedience, drunkenness, moral and legal misconduct, or repeated and prolonged absence. Servants could also depart from their master for failure to provide suitable food, physical abuse of himself or his family, failure to pay wages or "invasion by the master of the conjugal rights of the servant."<sup>27</sup> The Black Code, however, did not classify the invasion of a servant's "conjugal" rights as rape or comment as to whether the master could be criminally charged for such actions.

The code defined that any African American unable to provide for himself or herself as a pauper and placed responsibility for the care of such person on the members of their immediate family. Family members of any pauper were required to contribute money to the Board of Relief of Indigent Persons of Color, however the law did not specify a dollar amount owed per family. Board members kept records on the condition of the freedpeople, how the Board utilized funds, and which African Americans required public assistance. The code also required the establishment of a District Court Fund that paid the operational expenses associated with the court system and the previously mentioned fee-for-service payments to court officials. Contributions into this fund came from fees for apprenticeship licenses, fines, and taxes paid to the District Courts or magistrates.

In addition to the identification and management of paupers, the South Carolina Black Code also defined all persons who did not have a known residence or reputable

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<sup>27</sup> *The Statutes at Large of South Carolina, Volume XIII, 277.*

employment as vagrants. This classification also included anyone who performed work that required a license from the District Court without having first obtained appropriate permissions. The law allowed the District Courts to issue an arrest warrant for any person of color determined to be a vagrant. If convicted of vagrancy, blacks faced imprisonment and hard labor. The code also permitted the district judges to hire-out freedmen who were convicted of vagrancy for farm work or to labor on public utilities such as roads and buildings for the term of their sentence. The Black Code supported disciplinary measures to be used against vagrants and noted, “the person receiving such vagrant shall have the rights and remedies for enforcing good conduct and diligence of labor that are herein provided in the case of master and servant.”<sup>28</sup>

The Black Code made clear that many white politicians viewed blacks as inferiors and supported the continued discrimination of African Americans. Rhett expressed this sentiment in his letter to Burt and noted that the new laws should be “surrounded with such safeguards, as will make the change as slight as possible both to the white man and to the negro.”<sup>29</sup> Governor Orr also conveyed his opinion to the South Carolina legislature regarding blacks’ inferiority to whites, their ignorance, and their tendency towards vice and crime.<sup>30</sup> The blatant expression of white supremacy found throughout South Carolina could not be ignored. Even the often racially biased professor Dunning simplistically but accurately described the Black Code when he noted it “placed persons

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<sup>28</sup> Ibid., 285.

<sup>29</sup> E. Rhett to A. Burt, October 14, 1865, Armistead Burt Papers, David M. Rubenstein Rare Book & Manuscript Library, Duke University, Durham, NC.

<sup>30</sup> *Journal of the House of Representatives of the State of South Carolina* (Columbia: Julian A. Selby, 1865), 18.

of color on a different plane from the whites.”<sup>31</sup> For many white South Carolinians, African Americans never had been and never would be their equals.

The Black Code however was more than just a legal means to control the social and economic futures of the freedpeople. The Black Code was also a political tool. Influential white men, who included provisional governor Perry and members the South Carolina legislature, utilized the code as an attempt to pacify the supporters of freedmen’s rights under the guise of protecting African Americans. These men believed the Black Code represented a pathway to gain readmission of the state into the Union and the state’s representatives into Congress. Historian Joel Williamson commented that “the code was a concession to outside pressures, an initial payment on the price of readmission into the councils of the nation.”<sup>32</sup> If the South Carolina political elite could convince northerners and the members of Congress that their primary concern was the well-being of African Americans, they could then reestablish their state’s political sovereignty. Afterwards, the legal control of the freedpeople would be readily available and white South Carolinians could return to politics as usual.

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<sup>31</sup> William A. Dunning, *Reconstruction Political and Economic, 1865-1877*, in *The American Nation: A History*. ed. Albert Bushnell Hart, LL.D. (New York: Harper & Brothers, 1907), 56.

<sup>32</sup> Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (Chapel Hill: The University of North Carolina Press, 1965), 72.



## CHAPTER 4: RESPONSE TO THE BLACK CODE

As politically influential whites worked to control the legal rights of South Carolina's freedmen, opposition to the impending Black Code grew. In Ohio the *Cleveland Leader* described the code as "South Carolina arrogance."<sup>1</sup> In the months to come, other newspapers also registered similar criticism of the code and its authors. The editor of the *Belmont Chronicle* of St. Clairsville Ohio ridiculed President Johnson, declaring, "If the President believes that the word of the nation sacredly pledged to the freedmen will be kept by the black codes of South Carolina and Mississippi, his faith would remove mountains."<sup>2</sup> In the fall 1865 the Black Code created a sense of urgency among African Americans throughout South Carolina who quickly mobilized to secure their newfound freedom and defend their civil rights.

Black South Carolinians understood the social and political limitations they faced following emancipation. Freedom did not mean equality for the freedmen when compared to their former masters. With the ratification of the Black Code looming in December 1865, leaders from throughout the black community took action. Beginning on November 20, 1865, African Americans held the first State Convention of Colored People of South Carolina at the Zion church on Calhoun Street in Charleston. The delegation included fifty-two black and mixed-race men from throughout the state.

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<sup>1</sup> *Cleveland Leader*, November 13, 1865, p. 1.

<sup>2</sup> *Belmont (OH) Chronicle*, March 8, 1866, p. 1.

Nearly half of the men present came from Charleston County. Both ex-slave and freeborn attended the proceedings. In order to conduct the business at hand, the convention leaders formed several committees who were tasked with determining the rules that governed the convention and reporting a variety of resolutions to the delegation at large.

It is important to understand that African Americans throughout South Carolina interpreted the effects of the Black Code differently. Thomas Holt noted that, “While the Black Codes may have restricted the newly won freedoms of the ex-slaves, they struck still harder at the more traditional privileges of the antebellum free class.”<sup>3</sup> These freeborn blacks, many of whom lived financially comfortable lives prior to emancipation as working class artisans, comprised the majority of the convention delegation. Holt argued: “it was against this legislation that this convention of barbers and millwrights and carpenters and tailors and masons directed most of their wrath.” The code threatened not only ex-slaves with serfdom, but also the “ultimate survival of the bourgeoisie class.”<sup>4</sup>

Not all of the convention attendees were black, however. General Rufus B. Saxton the assistant state commissioner of the Freedmen’s Bureau, was one of many politically influential white guests. A longtime supporter of black civil rights, Saxton addressed the convention attendees, indicating that he sympathized with the task at hand and “hoped that the time was not far distant when we would get all we may ask for.”<sup>5</sup>

This was not the first time General Saxton had spoken publicly in support of black

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<sup>3</sup> Thomas Holt, *Black over White: Negro Political Leadership in South Carolina during Reconstruction* (Urbana: University of Illinois Press, 1979), 19.

<sup>4</sup> *Ibid.*, 20.

<sup>5</sup> *Proceedings of the Colored People’s Convention of the State of South Carolina* (Charleston: South Carolina Leader Office, 1865), 16.

political rights, nor would it be the last. Saxton previously urged blacks to “petition the President of the United States and Congress for the right to exercise the elective franchise.” The general also challenged African Americans to stand up for their freedoms as he asserted, “If the nation asks you to help in time of war, you certainly have a right to call for the help of the nation for your rights in time of peace.”<sup>6</sup> In early 1866 Saxton expressed his concern that should federal troops be removed from the region, blacks would be left at the mercy of the white leadership. The general noted that if the freedmen lost federal protection, “It will be the purpose of their former masters to reduce them as near to a condition of slaves as it will be possible to do. I think that the black codes that have passed the legislature of the State are a sufficient indication of the truth of what I say.”<sup>7</sup> Saxton’s words drew the attention of both African Americans and whites. The freedmen generally considered Saxton as representing strength and equality against racial bias. The convention delegates formally thanked Saxton “for the impartial manner in which he has guarded and protected the freed people of this Department, manifesting, in all of his intercourse with us, the spirit of the soldier, the patriot, and the philanthropist.”<sup>8</sup> For many politically influential white men, the general’s support of freedmen’s rights made him a liability, which ultimately cost him his position within the Freedmen’s Bureau in South Carolina.

From November 20-25 the deliberations of the Colored People’s Convention continued and addressed topics that mattered most to African Americans across the state.

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<sup>6</sup> Holt, *Black Over White*, 12.

<sup>7</sup> *Report of the Joint Committee on Reconstruction* (1866; reprint, Westport: Negro Universities Press, 1969), 218-219.

<sup>8</sup> *Proceedings of the Colored People’s Convention of the State of South Carolina*, 13.

Education for their children took a high priority as the delegation cited past “forced ignorance and degradation.”<sup>9</sup> Members of the business committee proclaimed that “Knowledge is Power, and an educated and intelligent people can neither be held in, nor reduced to slavery.”<sup>10</sup> The committee members encouraged the building of schools in every neighborhood and the regular attendance of every child.

The convention proceedings suggested that the delegates were more interested in a peaceful resolution with whites, rather than a confrontation with them. The business committee offered a resolution “That as the old institution of slavery has passed away, that we cherish in our hearts no hatred or malice toward those who have held our brethren as slaves, but we extend the right hand of fellowship to *all*, and make it our special aim to establish unity, peace and love amongst men.”<sup>11</sup> On Tuesday, November 23, 1865, the delegates again offered their assurance of the peaceful intentions of the South Carolina freedpeople. The delegation unanimously adopted a resolution that stated, “That it is with deep regret that we perceive a willingness on the part of some of the people of this State to believe that there is a danger of an insurrection by the ‘Negroes,’ and we take this opportunity of making it known to the world, that our past career as *law-abiding* SUBJECTS, shall be strictly adhered to as law-abiding *citizens*.”<sup>12</sup> Unfortunately, these offerings of peace largely fell upon deaf ears. At the same time the Colored People’s Convention met in Charleston, members of the South Carolina Legislature met in Columbia, to work out the details of state’s Black Code.

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<sup>9</sup> Ibid., 10.

<sup>10</sup> Ibid., 9.

<sup>11</sup> Ibid., 13 (emphasis in original).

<sup>12</sup> Ibid., 17 (emphasis in original).

The men who attended the convention also found inspiration from America's Founding Fathers. Robert C. DeLarge, chair of the credentials committee, harkened back to America's revolutionary past when he noted, "The simple act of emancipation, if it stops there, is not worth much. We are not freemen till we attain to all the rights and privileges of freemen. Without these, we will still have to be governed by laws that we have no voice in making, and submit to taxation without representation."<sup>13</sup> In a written address to the People of the State of South Carolina, the delegation again referenced the Declaration of Independence arguing "that all men are created equal" and "that governments are to protect, not to destroy the rights of mankind."<sup>14</sup> Influenced by America's past and determined to enact change in the present, the delegation needed to find its own voice in order to protect the future freedom of all persons of color.

African Americans knew that they must be involved firsthand in securing their newfound freedom. The delegates noted, "We fully recognize the truth of the maxim that "God helps those who help themselves."<sup>15</sup> The convention attendees did not expect special treatment or legal leniency when compared to whites; rather they desired only an opportunity for self-betterment. The delegation sought merely to be "recognized as men; that we have no obstructions placed in our way," which deprived freedmen the rights to legitimate business, trial by a jury of their peers, the establishment of schools and the ownership of land.<sup>16</sup>

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<sup>13</sup> Ibid., 19.

<sup>14</sup> Ibid., 23-24.

<sup>15</sup> Ibid., 23.

<sup>16</sup> Ibid., 25.

These leaders in the African American community viewed political equality as an opportunity to remove the barriers that prevented them from becoming prosperous members of society. Laws such as the Black Code controlled the political and social status of African Americans based solely on the color of their skin, not on the merit of their actions. The delegation petitioned the state legislature to repeal any laws that proscribed blacks and to guarantee that trial by a jury of their peers and suffrage be granted to the freedmen, as “they are the rights of every freeman, and are inherent and essential to every republican form of government.”<sup>17</sup> As African Americans sought political support to ensure the future of their civil rights, in the fall 1865 they found an ally from an unlikely source.

In July 1865 President Johnson commissioned the German-born Union General Carl Schurz to travel throughout the South and issue a report related to the general condition of the region following the war. Johnson sought validation that his plans for Reconstruction were indeed effective and “hoped that Schurz would submit a report favorable to his belief that white southerners should rebuild their region and dictate the new order of race relations.”<sup>18</sup> Rather than progress, however, in his strident report Schurz represented the reality of the poor conditions found in the South, particularly those experienced by the blacks. The ravages of war destabilized the South’s agricultural system as four years of intense combat destroyed southern crops and farmland. Emancipation also forever changed the southern labor system. Schurz noted that many

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<sup>17</sup> Ibid., 28.

<sup>18</sup> Smith, *An Old Creed for the New South: Proslavery Ideology and Historiography, 1865-1918*, (1985; reprint, Carbondale: Southern Illinois University Press, 2008), 77.

white southerners believed that without slavery plantation owners lacked a reliable source for the vast supplies of labor required for the region's economic success.

The Black Code in fact provided, among other things, an answer to white southerners' labor needs by largely limiting freedmen to agricultural jobs. Schurz concluded that under the guise of protecting African Americans, "the laws which will be passed to guard against the dangers arising from emancipation will be directed against the spirit of emancipation itself."<sup>19</sup> The general commented on the underlying "social problems" in the South and how whites used legislation such as the Black Code to regulate African American behavior. Schurz expressed concern that white southerners' longstanding belief that African Americans would not work without "physical compulsion" necessitated extraordinary measures to produce a viable "system of coercion." Schurz believed that white southerners regarded the Black Code as an acceptable substitute, an intermediate point between southern slavery and northern free labor.<sup>20</sup>

Clearly critical of the proposed Black Code, Schurz discussed the need to create a functioning free-labor system throughout South Carolina. Not surprisingly, the local white leadership took every opportunity to argue against such a system. Schurz explained that most white South Carolinians expressed their doubts that the former slaves could adapt to and maintain a free-labor system. Local white landowners argued that as freedmen, blacks often deserted their former plantations or violated the terms of their labor contracts, which frequently bound black laborers to harsh working conditions for

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<sup>19</sup> Carl Schurz, *Report on the States of South Carolina, Georgia, Alabama, Mississippi, and Louisiana* (1865; reprint, New York: Arno Press and The New York Times, 1969), 34.

<sup>20</sup> *Ibid.*, 32.

meager wages. Many whites correlated this behavior to the instability of freedmen and the subsequent need for white control over their actions.<sup>21</sup> Schurz noted that white southerners doubted whether northerners could ever understand the freedpeople like them. Committed fully to the ethos of plantation paternalism, southern whites remained convinced that African Americans benefitted from their oversight and control.

General Schurz was not alone in believing that South Carolina's leaders were incapable of impartiality when it came to creating policies in the best interests of African Americans. General Quincy Adams Gillmore also shared his concerns. A West Point graduate, General Gillmore was the Union Army's leading artillery expert during the Civil War. Among his numerous battlefield accomplishments, Gillmore helped orchestrate the hard fought attacks and subsequent capture of Fort Wagner and Fort Gregg on Morris Island. The 54<sup>th</sup> Massachusetts, a black regiment, aided in Gillmore's efforts against Fort Wagner.<sup>22</sup>

Writing to Schurz in July 1865, Gillmore expressed his concerns that a fair and functioning free labor system was doubtful in the former Confederacy. Gillmore believed that such a compromise was impossible due to the "mutual distrust and prejudice" that existed between the races.<sup>23</sup> The general described the relative ease that whites could create "burdens upon the negro race scarcely less irksome than those from which it has theoretically escaped." Gillmore noted for example that if South Carolina's white leadership made slight modifications to the current New England apprenticeship and

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<sup>21</sup> Ibid., 17.

<sup>22</sup> James M. McPherson, *War on the Waters: The Union & Confederate Navies, 1861-1865* (Chapel Hill: University of North Carolina Press, 2012), 175.

<sup>23</sup> Carl Schurz, *Report on the States of South Carolina, Georgia, Alabama, Mississippi, and Louisiana*, 47.



vagrancy laws, they could keep blacks in “practical slavery.” He worried that blacks could be “legally subjected to all the oppressive features of serfdom, peonage, and feudalism combined, without possessing the right to claim, much less the power to exact, any of the prerogatives and amenities belonging to either of those systems of human bondage.”<sup>24</sup> Gillmore’s concerns proved true less than six months later when the South Carolina legislature ratified the Black Code.

Following the ratification of the code in late December 1865 African Americans had few opportunities to progress both socially and economically as freedpeople. General Saxton understood that most blacks, having only recently been freed from slavery had little to offer to improve their position in society other than physical labor. A fact that many former slaves no doubt fully understood as previous experience taught many freedmen the opportunities that hard work availed them.

During the Civil War, black labor not only aided the Union Army in its fight against the Confederacy, but also provided an opportunity for many blacks to break the bondage of slavery and begin taking control of their own futures. Although initially resistant to the idea, the Union leadership quickly reconsidered using the help of both free-blacks and former slaves to aid in the war effort. As the Union Army advanced throughout the South many slaves abandoned their plantations, offering their support to the Union in hopes of finding freedom. Black men and women offered information about the local region, supplied food and drink, and perhaps most importantly provided a valuable source of much-needed labor. By 1862 federal legislation authorized President Lincoln to “mobilize ‘persons of African descent’ against the rebellion, and granted

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<sup>24</sup> Ibid., 48.

freedom to any slave so employed.”<sup>25</sup> The same black labor that formed the foundation of slavery also created a pathway to freedom for many African Americans.

Freedom was not exactly what many former slaves envisioned. Although no longer bound to their former master’s land and largely protected from slavery’s harshest forms of capital punishment, former slaves performed some of the army’s most dangerous and physically demanding jobs. These included “building fortifications, felling trees, constructing roads, laying railroad tracks, repairing levees, and digging canals.” The hazards associated with these tasks both debilitated black workers and left them vulnerable to disease.<sup>26</sup> Additionally, while the Militia Act mandated that African Americans be compensated for their labor in support of the Union Army, most black workers earned significantly less than whites. Despite the inherent risks and monetary inequity, former slaves prospered as military free-laborers. Many blacks gained the power to change employers, which they leveraged to avoid an abusive supervisor or increase their compensation. African Americans also organized as a community and demanded that “equal service merited equal recompense.”<sup>27</sup> Numerous wartime black community leaders played critical roles in South Carolina politics when the war was over. For many African Americans, their experience as agricultural free-laborers during the war served them well as they sought equality as freedmen during Reconstruction.

Following the war and from his post as assistant commissioner, General Saxton believed that all South Carolinians required a mutually beneficial free-labor system, as

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<sup>25</sup> Ira Berlin, Barbara J. Fields, Steven F. Miller, Joseph P Reidy, and Leslie S. Rowland, *Slaves No More: Three Essays in Emancipation and the Civil War* (Cambridge: Cambridge University Press, 2007), 103.

<sup>26</sup> *Ibid.*, 105.

<sup>27</sup> *Ibid.*, 137.

opposed to what he considered the racially unjust Black Code. Moreover, Saxton knew that most white landowners were unlikely to treat the freedmen fairly. Although the general faced a shrinking budget and a dwindling staff in the closing months of 1865, he continued to work in what he believed was in the best interest of African Americans. Just as they had done earlier in the year, Saxton's staff drafted model labor contracts for black workers to use when they negotiated with white landowners. These contract templates helped mitigate some of the more discriminatory aspects of the typically biased work agreements and assisted African Americans in obtaining fair wages and reasonable working conditions. Despite his limited resources the general continued to pressure landowners. These later versions of Saxton's contract templates increased the financial burden to white landowners by increasing the contract fees due per worker employed. As one might imagine, Saxton's efforts did little to endear whites to his agency and likely contributed to his removal from his position within the Bureau.<sup>28</sup>

Despite the efforts of the Freedmen's Bureau on behalf of black workers, whites continued to dictate the terms of most labor contracts. Like the Black Code, these contracts regulated African American behavior and possessions, and relegated blacks to inferiority. Landowners often paid low wages, dictated work schedules, limited the personal possessions of freedmen, and fined their workers for absence. Because of these reasons, and others, blacks often refused to sign contracts with white landowners.

Particularly resistant to enter into labor agreements, African Americans in the South Carolina Sea Island regions believed the federal government held the key to their personal success. The Freedmen's Bureau allotted tracts of land previously owned by

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<sup>28</sup> Martin Abbott, *The Freedmen's Bureau in South Carolina, 1865-1872* (Chapel Hill: University of North Carolina Press, 1967), 71.

plantation owners and confederate supporters to many black families. Through farming, these black “landowners” had a means to feed their families and earn a living. The possibility of land ownership enticed blacks from around the state to travel east to the coastal regions. With few southern publishers in a position to publish books following the defeat of the confederacy, a northern journalist, John Townsend Trowbridge embraced the task of telling the story of the postbellum South and its people. In the summer 1865 and again in 1866 Trowbridge travelled extensively throughout the South, interviewing the local inhabitants, both black and white, and documenting his experiences. During his travels through South Carolina Trowbridge observed that many freedmen from throughout the state migrated to the Sea Islands as these “interior” blacks were “naturally averse to accepting a white master, when he might be his own master elsewhere.”<sup>29</sup> Advised by men like Secretary of War Edwin M. Stanton and General Saxton the freedmen “claimed lands, and positively refused to make contracts.”<sup>30</sup>

For most black men land ownership was uncertain at best. President Johnson supported the restoration of property rights to white landowners once pardoned for their former allegiance to the Confederacy. Conflicts over property rights ensued. Despite the uncertainty of being left without land and without a contract to support their families, many freedmen still risked the lure of self-proprietorship. Trowbridge interviewed a black man from Charleston who traveled to James Island and noted, “I heard there was a chance of we being our own driver here; that’s why we come.” “If I can’t own de land,

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<sup>29</sup> John Townsend Trowbridge, *The South: A Tour of Its Battlefields and Ruined Cities, A Journey Through the Desolated States, and Talks with the People, 1867*, ed. J.H. Segars (1867; reprint, Macon: Mercer University Press, 2006), 534.

<sup>30</sup> *Ibid.*, 535.

I'll hire or lease land, but I won't contract."<sup>31</sup> Unfortunately for many African Americans, the ability to resist entering into labor contracts was short lived.

By early 1866 the threat of labor shortages in South Carolina largely passed as many freedmen found themselves forced by economic necessity to enter into contracts with white landowners. This was at least in part due to the fact that on January 15, 1866, the Freedmen's Bureau replaced Saxton with General Robert Kingston Scott as assistant commissioner in South Carolina. Historian Laura Josephine Webster noted that despite Saxton's passion for the wellbeing of the freedmen, his narrow focus "might unwittingly hinder rather than help the cause he advocated." General Scott better balanced the needs of both whites and blacks. Fully committed to the establishment of a functioning free-labor system, Scott held the freedmen equally responsible to fulfill their contract obligation as he did whites to provide fair wages and acceptable working conditions. The general supported the removal of any freedmen from their land who refused to enter into reasonable labor contracts. Through strict management, Scott experienced some success in stabilizing the agricultural system throughout the state, although the freedmen in some regions remained more difficult to manage. As previously mentioned many blacks in and around the Sea Islands refused to sign labor agreements and those who did often did not fulfill the terms of their contracts. Scott threatened "any freedman wandering off the plantation in disregard of his contract terms was to be arrested and put to work on public roads."<sup>32</sup> For many freedmen this punishment no doubt likely seemed eerily familiar to one of many penalties enforced for vagrancy in the final act of the Black Code. Some

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<sup>31</sup> Ibid., 545.

<sup>32</sup> Abbott, *The Freedmen's Bureau in South Carolina, 1865-1872*, 73.

Sea Island blacks even threatened violence. However, the potential of military intervention largely suppressed most violent interactions.

While many freedmen did in fact contract with landowners because of Scott's tough management policies, some blacks responded to being forced into labor agreements by trying to assert more control over their contract terms. In some cases workers refused to work Saturdays. In another example the freedmen proclaimed "they would not work every day as prescribed by the contract, but only a day and a half or two days in the week." Landowners reacted to such extreme requests in a variety of ways that included ceasing to distribute Bureau rations to those freedmen "not engaged to an employer."<sup>33</sup>

Despite his hardline approach, Scott maintained a level of symmetry for both races in managing African American labor. Under Scott's leadership, state Bureau officials renewed their efforts to assist the freedmen in contract negotiations. This in fact led to higher wages and better working conditions for blacks. Webster described Scott as "a more efficient assistant commissioner...more conciliatory towards the white people of the state and less ardent in his advocacy of negro rights."<sup>34</sup> Considering the challenges he faced working on behalf of the freedmen in a state run by white men, Scott's approach, more so than that of Saxton, better stabilized South Carolina's labor force and increased the potential for economic recovery.

It is likely that no military commander offered a more direct response to the Black Code than General Daniel E. Sickles. A man of passion both in his personal and political life, Sickles had a checkered past. In 1859 Sickles killed his wife's lover Philip Barton

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<sup>33</sup> Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (Chapel Hill: The University of North Carolina Press, 1965), 92.

<sup>34</sup> Laura Josephine Webster, *The Operation of the Freedmen's Bureau in South Carolina* (Northampton: Department of History of Smith College, 1916), 91.

Key, son of Francis Scott Key who wrote *The Star Spangled Banner*. Upon learning of the affair Sickles approached Key in broad daylight and shot him three times. The final shot struck Key in the ribs, mortally wounding him.<sup>35</sup> Following the killing, Sickles assembled an elite defense team that included future secretary of war, Edwin M. Stanton. Despite eyewitness accounts of the attack, Sickles' lawyers argued "the radical new idea that jealousy, even violent jealousy, was an instinct-seeded in man by God and irrevocably a part of his human nature."<sup>36</sup> Sickles was therefore unable to control himself in killing Key. Whether or not this was true, the trial represented the first time in the United States that anyone used a claim of temporary insanity as a legal defense. In the years to come controversy also permeated Sickles' military career.

Sickles received the rank of brigadier general on May 13, 1862. After initially being rejected for the promotion, Sickles called upon his friend, former attorney, and then Secretary of War Edwin M. Stanton who persuaded Congress to reconsider the advancement.<sup>37</sup> By January 1863 Sickles advanced to the rank of major general. Considered a political general, Sickles' rank represented his bureaucratic accomplishments as a civilian, his friendship with Stanton and other influential politicians, and his ability to utilize the press to build his military persona, more than his battlefield experience or successes. During the battle at Gettysburg, General Sickles demonstrated not only his strong will and disregard of authority, but also the limits of his

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<sup>35</sup> Marilyn Aitken and Robert Aitken, "Crime of Passion Defense," *Litigation* 36 (Fall 2009): 52.

<sup>36</sup> Dawn Keetley, "From Anger to Jealousy: Explaining Domestic Homicide in Antebellum America," *Journal of Social History* 42 (Winter 2008): 269.

<sup>37</sup> Steven W. Sears, *Controversies & Commanders: Dispatches from the Army of the Potomac* (Boston: Houghton Mifflin Company, 1999), 203.

skills as a commander. During the bloody conflict, Sickles disobeyed the orders of commanding General George Meade, which resulted in significant troop losses and a personal injury that cost Sickles his right leg. Despite the battlefield disaster, Sickles received commendation for his military actions, largely as a result of his “highly fictionalized version of what happened at Gettysburg on those hot July days.”<sup>38</sup> Sickles’ political prowess once again proved valuable in advancing his military career. This trend continued after the war.

In July 1865 President Johnson appointed Sickles military governor of South Carolina. During his tenure the general maintained both his brazen personality and political awareness. On January 17, 1866 Sickles issued his General Orders No. 1 in direct response to the state legislature’s recently adopted Black Code. No doubt the potential of several hundred thousand future black voters inspired his no-nonsense reaction to the code. For a man known for his rough exterior, his order began in an almost poetic fashion as he wrote: “To the end that civil rights and immunities may be enjoyed; that kindly relations among the inhabitants of the State may be established; that the rights and duties of the employer and the free laborer respectively may be defined; that the soil may be cultivated and the system of free labor undertaken; that the owners of estates may be secure in the possession of their lands and tenements; that persons able and willing to work may have employment; that idleness and vagrancy may be discountenanced and encouragement given to industry and thrift; and that humane provisions may be made for the aged, infirm, and destitute, the following regulations are

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<sup>38</sup> Ibid., 221.



established for the government of all concerned in this department.”<sup>39</sup> The general followed his eloquent introduction with clear and decisive words that made no mistake as to his stance on the state’s Black Code.

Sickles attacked the code at almost every level and made clear that “All laws should be applicable alike to all inhabitants” regardless of color or caste.<sup>40</sup> The general addressed the labor laws from the code and declared that all persons have the expressed right to work in any trade and should not be prohibited from seeking any type of employment. Sickles attacked the code’s vagrancy laws and “recognized that only those laws applicable to white persons will be recognized as the only vagrant laws applicable to the freedmen.”<sup>41</sup> Sickles’ orders declared it illegal for anyone to infringe on the constitutional right of any inhabitant of the state. Finally, the general ensured that any criminal punishments inflicted on the freedmen would be the same as those that applied to whites.

From the political mobilization of the African American community, to the individual support of men like Saxton and Sickles, numerous constituencies challenged the Black Code at the state level. Republicans in Congress also went on the offensive and attacked not only the South Carolina Code, but those codes of the other southern states as well. In the first half of 1866, two pieces of Congressional legislation represented the culmination of efforts throughout the country to combat the Black Codes

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<sup>39</sup> *Executive Documents Printed by Order of the House of Representatives*, 91 (Washington: Government Printing Office, 1873), 200.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, 201.

of the South. These included the Civil Rights Act of April 1866 and the Fourteenth Amendment to the U.S. Constitution, which passed congress in June of that year.

Written by Republican Senator Lyman Trumbull of Illinois, the Civil Rights Act of 1866 declared that all persons born in the United States, with the exception of untaxed Indians, and regardless of race were citizens and therefore protected equally under the law. Furthermore, the act specifically addressed many of the rights stripped from African Americans under the Black Code. These included the “right to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property.”<sup>42</sup> The act also negated any existing laws, like the South Carolina Black Code, that deprived any person of these rights.

The Civil Rights Act of 1866 divided the Legislative and Executive branches of government. Senator Trumbull introduced the act in the Senate in January 1866, where over the next two months it proceeded to pass both houses of Congress. The act represented a significant blow against the oppression of African Americans in the South. Unfortunately, the road to equality would not be smooth.

In a move that could have solidified the future existence of the Black Codes throughout the South, President Johnson vetoed the Civil Rights bill on March 27, 1866. Subsequently, Johnson addressed the Senate to justify his disapproval of the bill. Throughout his lengthy speech, the president questioned the intellectual equality of non-whites and, specifically, the freedmen when compared to whites. Johnson commented that African Americans, having only recently been freed from bondage, did not possess

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<sup>42</sup> George P. Sanger, ed., *The Statutes at Large, Treaties, and Proclamations, of the United States of America from December, 1865 to March 1867*, Thirty-ninth Congress (Boston: Little, Brown, and Company, 1868), 27.

the intelligence necessary to be privileged with equal rights. As to the freedmen, Johnson asked: “Can it be reasonably supposed that they possess the requisite qualifications that entitle them to all the privileges and immunities of citizenship of the United States?”<sup>43</sup> Johnson next noted that foreign-born persons were more worthy of citizenship than blacks. The president argued that “the bill in effect proposes a discrimination against large numbers of intelligent, worthy, and patriotic foreigners, and in favor of the negro, to whom, after long years of bondage, the avenues to freedom and intelligence have just now been suddenly opened. He must of necessity, from his previous unfortunate condition of servitude, be less informed as to the nature and character of our institutions.”<sup>44</sup> Johnson’s exposition of white supremacy matched that of most white southerners.

The president also questioned the timing of the Civil Rights bill. Johnson believed that without Congressional representation, white southerners lacked a political voice in issues that were paramount to the future of their states, such as the civil rights of freedmen. Johnson questioned whether “when eleven of the thirty-six States are unrepresented in Congress at the present time, it is sound policy to make our entire colored population...citizens of the United States.”<sup>45</sup> The president considered civil rights for freedmen a concern to be decided by the states’ governments, not by the federal legislature. He commented that by forbidding any existing laws that refused African Americans their rights and by punishing men who supported such laws both conflicted

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<sup>43</sup> Veto of the Civil Rights Bill, March 27, 1866, in Paul H. Bergeron, ed., *The Papers of Andrew Johnson*, 14 vols. to date (Knoxville: The University of Tennessee Press, 1967- ), 10:313.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*, 312.

with and “invades the judicial power of the State.”<sup>46</sup> Johnson argued that the bill, if ratified, would further support centralized government and violate state’s rights. The president concluded that the proposed Civil Rights act was unnecessary because former President Lincoln’s Emancipation Proclamation and the Thirteenth Amendment to the Constitution were in fact sufficient to protect the personal and political freedoms of blacks.

Johnson’s words made unmistakably clear that he opposed equal rights for African Americans. Fortunately, however, the president did not have the final word on the question of black civil rights. On April 9, 1866, the House of Representatives followed the example set in the Senate three days earlier and ratified the Civil Rights Bill over Johnson’s veto. This action represented the first time Congress passed a major bill over the executive’s objection.<sup>47</sup> The Civil Rights Act of 1866 represented the first federal law aimed at the nullification of the Black Codes across all of the southern states. The legislation also prevented any similar laws from being created in the future.

The Civil Rights Act of 1866 represented a monumental victory for African Americans throughout the South because it guaranteed blacks the same rights as whites, at least theoretically. Despite this success, many supporters of the act nonetheless doubted the federal government’s ability to protect the civil rights of the freedpeople. In response to this concern Congress charged the Joint Committee on Reconstruction to draft a constitutional amendment that further secured the federal government’s ability to

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<sup>46</sup> Ibid., 315.

<sup>47</sup> John David Smith, ed., *A Just and Lasting Peace: A Documentary History of Reconstruction* (New York: Penguin Group, 2013), 186.

create laws and protect the rights of all United States citizens.<sup>48</sup> In his *The Fourteenth Amendment* (1988) historian William E. Nelson described the challenges and triumphs experienced by those who authored this complicated law. Nelson described the initial draft of the Constitutional amendment as both clear and unambiguous.

Section one, for example, guaranteed equal rights to “all persons” while section two prohibited the state’s congressional representation if they denied blacks suffrage rights.<sup>49</sup> Unfortunately, in its final version the Fourteenth Amendment lacked some of its initial clarity. Rather than guaranteeing equal rights to all persons, the amendment declared with less precision: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”<sup>50</sup> Additionally, efforts to eliminate the congressional representation for those states that prohibited the franchise to any persons based solely on their “color or creed” also failed.<sup>51</sup> These omissions did not, however, overshadow the law’s significance.

Despite its imperfections, Congress passed the Fourteenth Amendment on June 13, 1866. In accordance with Article V of the U.S. Constitution, the proposed amendment still needed approval from at least three-fourths of the state’s legislatures before it became law. Congress also required the adoption of the amendment by the former Confederate states as part of the Reconstruction process and before the southern state’s congressional representatives could be seated. It would be another two years before the

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<sup>48</sup> William E. Nelson, *The Fourteenth Amendment, From Political Principle to Judicial Doctrine* (Cambridge: Harvard University Press, 1988), 49.

<sup>49</sup> Ibid.

<sup>50</sup> *Amendment to the United States Constitution, Article XIV, Section I.* (June 16, 1866) *Statutes at Large* 14 (Thirty-ninth Congress), 358.

<sup>51</sup> Nelson, *The Fourteenth Amendment*, 50-51.

South Carolina legislature finally ratified the Fourteenth Amendment on July 9, 1868.

Although there was still work to do, the amendment represented yet another victory for African American rights and further solidified the demise of the notorious southern Black Codes.

Not surprisingly, President Johnson opposed the proposed amendment strongly, again largely basing his opposition on the questions of congressional representation and state's rights. With the former Confederate states still unrepresented in Congress, Johnson deemed amending the Constitution at that time unjust. The president argued: "whether any amendment to the Constitution ought to be proposed by Congress, and pressed upon the legislatures of several States for final decision, until after the admission of such loyal senators and representatives of the now unrepresented States as have been or as may hereafter be chosen in conformity with the Constitution and laws of the United States."<sup>52</sup> In what amounted to a political standoff, Congress required the southern states to approve the Fourteenth Amendment before their representatives would be readmitted to Congress.

By mid-1866 federal legislation thus threatened the future of the Black Codes throughout the South. In South Carolina, in addition to Sickles' military order, new laws further doomed the code's existence. Under the leadership of Governor Orr "an interesting and significant movement developed among the white leadership to conciliate Northern sentiment and win readmission."<sup>53</sup> Responding to increasing northern criticism of the Black Code Orr noted that "It will be necessary to convene the legislature of this

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<sup>52</sup> Message re Amending the Constitution, June 22, 1866, in Bergeron, ed., *The Papers of Andrew Johnson, Volume 10*, 615.

<sup>53</sup> Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (Chapel Hill: The University of North Carolina Press, 1965), 77.

State at an early day to modify our legislation of December last so as to conform to the ‘civil rights Act,’ and the requirements of the Freedmen’s Bureau.”<sup>54</sup> As a result, the South Carolina Legislature held a special legislative session in September 1866 and passed two statutes that repealed numerous provisions of the Black Code. Signed into law on September 21, 1866, the legislature amended the District Courts Act and passed a law that more clearly defined the rights of African Americans to be in line with those of whites.

Officially titled, An Act to Amend an Act Entitled “An Act to Establish District Courts” the new law repealed the majority of the discriminatory provisions from the original District Court Act. The only provisions that remained defined the number of courts in each district and the amount paid to each district judge. The law contained virtually no inflammatory language pertaining to race and did not differentiate court processes based on skin color. Instead, it provided a legal framework that applied equally to all races, at least by the letter of the law.

An Act to Declare the Rights of Persons Lately Known as Slaves and as Free Persons of Color was more direct in protecting African Americans. It made an unmistakable declaration that the South Carolina Black Code no longer controlled the future condition of the freedpeople. The new law declared that blacks in the state “shall have the right to make and enforce contracts, to sue, be sued, to be affiants, and give evidence, to inherit, to purchase, lease, sell, hold, convey and assign real and personal property.”<sup>55</sup> The act also required equal punishments for both whites and blacks for like crimes. The law noted that “all Acts and parts of Acts specially relating to persons lately

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<sup>54</sup> Ibid., 78.

<sup>55</sup> *The Statutes at Large of South Carolina, Volume XIII*, 366-29.

slaves and free persons of color contrary to the provisions of this Act, or inconsistent with any of its provisions, be, and the same are hereby repealed.”<sup>56</sup> Notably, the state legislators did not repeal or amend the previous laws associated with paupers and vagrancy. Inter-racial marriage also remained illegal. Historian Joel Williamson described the efforts of the South Carolina Legislature and noted that “With this action, the line was drawn; South Carolina would of its own volition and without a *quid pro quo* make no further concession towards Negro equality.”<sup>57</sup> While the Black Code no longer existed, the persecution of African Americans in South Carolina had just begun.

In less than a year’s time the South Carolina Black Code came and went, creating what can best be described as a unique situation for the state’s white leadership. The Black Code, created in the name of state sovereignty and the protection of the freedpeople, in fact was a backward turn to the ideology and ethos of the old slave codes. As a result, the code hindered the readmission of South Carolina’s representatives and senators to Congress. Without this crucial step in the Reconstruction process, white South Carolinians lacked the political influence needed to recreate their desired antebellum-like social and economic systems.

In *The Aftermath of Slavery* (1905), the African American author William Sinclair noted that the southern Black Codes “fired the hearts of the people of the North and aroused their keener sense of justice and deeper feelings of humanity as nothing else

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<sup>56</sup> Ibid.

<sup>57</sup> Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877*, 79.



could have done.”<sup>58</sup> Northern political leaders understood that the “admissions of southern delegates at this time would have entrenched the doctrines of state rights in their most obnoxious and menacing forms.”<sup>59</sup> The South’s white leadership would have blocked any congressional attempts to interfere with the southern Black Codes and retained the freedpeople in a quasi-slave status.

The Black Codes of the South also had a causative effect on both state and federal laws regarding race. Impassioned by the discriminatory southern codes, Congress passed both the Civil Rights Act of 1866 and the Fourteenth Amendment. The laws that defined the legal rights of the freedpeople in South Carolina also changed for the better. The Black Codes therefore created a need for legislative action that without the codes might not have existed. Legally, blacks gained civil rights and legal protection previously unavailable to them. Unfortunately, these victories were short lived. While the southern Black Codes no longer existed, their legacy of discrimination and violence continued full-blown into the next century.

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<sup>58</sup> William A. Sinclair, *The Aftermath of Slavery: A Study of the Condition and Environment of the American Negro* (1905; reprint, Columbia: University of South Carolina Press, 2012), 74.

<sup>59</sup> *Ibid.*, 75.

## CHAPTER 5: THE LEGACY OF THE BLACK CODE

The legalized discrimination African Americans faced under the South Carolina Black Code touched the most intimate details of their personal lives and limited black persons' opportunities for financial security. Despite the obstacles set before them, South Carolina's men and women of color nonetheless continued to fight for a better existence. The Civil Rights Act of 1866 supported racial equality and provided the freedmen a glimpse of hope that change awaited. Republican political influence, social unrest, pressure from northerners, and the desire to stabilize South Carolina's economic future caused many white South Carolinians to view the code as largely ineffective and ultimately led to its nullification.

The acknowledgement that the Black Code somehow hindered South Carolina's future in itself represented a significant victory for African American equality throughout the state. Unfortunately, however, the Black Code's repeal did not mean a decline in the racial bias of most white South Carolinians. The code's legacy of discrimination and violence ensured that blacks would continue to occupy an inferior position when compared to whites in all aspects of southern life.

The complexity of understanding the legacy of South Carolina Black Code lies in the dynamic of the relationships between blacks and whites. Violence and repression against the freedmen occurred simultaneously with periods of social and economic advancement for blacks. There was also no single event that sparked an increase in the

ideology of white supremacy. Rather, southern custom and racial intolerance manifested into the most notorious of racially discriminating laws, better known as Jim Crow.

The laws and customs that both whites and blacks generically described by the term Jim Crow developed over time and in response to an ever-changing interracial dynamic that followed emancipation. The precise timing of increased segregation and discrimination associated with Jim Crow remains debated. Historian Joel Williamson argued that the era of Jim Crow began immediately following emancipation, while historian C. Vann Woodward believed the political and social atmosphere in the South did not evolve to the scale of Jim Crow until the end of the nineteenth century. The evidence suggests that rather than being the result of a particular moment in history, the Jim Crow ideology evolved over time and likely began during the antebellum era as blacks and whites interacted more frequently than had been the case in the past. The South's economic dependence on slavery significantly increased the African American population in the region and forced the races together on a scale not previously experienced. In order to maintain control over African Americans following emancipation, politically influential whites responded with widespread discrimination, segregation and violence.

In *When Did Southern Segregation Begin* (2002) John David Smith described the development of race relations as “the intersection of “race,” “place,” and “space.”<sup>1</sup> Smith cited historian Roger A. Fisher whose “evolutionary concept of segregation in the South” differentiated “between segregation by custom, habit, or practice (de facto segregation) and segregation by specific law (de jure segregation)” as a means to understand the

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<sup>1</sup> John David Smith, *When Did South Segregation Begin?* (Boston: Bedford/St. Martins, 2002), 4.

progression of events that ultimately led to the Jim Crow laws.<sup>2</sup> How whites used a combination of de facto and de jure segregation to control the position of African Americans in society illustrated a continuation of traditional southern ideology about race and demonstrated how whites adapted their customs into laws to portray African American inferiority. As the freedpeople fought for a better existence, whites continued to attack the civil right of African Americans whenever the opportunity presented itself. W.E.B Du Bois poignantly noted that the freedmen “stood a brief moment in the sun; and then moved back again towards slavery.”<sup>3</sup> The ability to adapt to their ever-changing condition spoke volumes about the freedpeople’s tenacity and resolve.

Historians argue that to varying degrees, although blacks never reached the status of white men, African Americans gained limited societal improvements during Reconstruction and shortly thereafter. Williamson noted that favorable growing conditions and fair crop prices from 1868 to 1873 brought prosperity to many cotton farmers, both black and white.<sup>4</sup> Blacks succeeded as farmers and landowners, worked in various trades, and owned and ran businesses. As a result of their economic growth, Williamson found that “In freedom, Negroes were also able to avail themselves of the professional services of physicians and lawyers, to use transportation services, attend entertainments, dine in restaurants, and patronize bars and saloons. Further, they were able to support numerous social and economic co-operative organizations among themselves: reading clubs, fire companies, military companies, burial and insurance

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<sup>2</sup> Ibid., 7.

<sup>3</sup> W.E.B. Du Bois, *Black Reconstruction in America, 1860-1880* (1935; reprint, New York: Free Press, 1992), 30.

<sup>4</sup> Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (Chapel Hill: The University of North Carolina Press, 1965), 168.

organizations, and fraternal organizations.”<sup>5</sup> Williamson attributed the material and social success experienced by the freedmen to their “temporary political ascendancy” that often “turned doubtful economic issues in his favor.”<sup>6</sup> Politics became a weapon of protection that the freedmen used to combat racial discrimination.

Instrumental to freedmen’s political success, on March 2, 1867 Congress passed the first Military Reconstruction Act. Known as “An Act to Provide for the More Efficient Government of the Rebel States” this legislation ended the era of Presidential Reconstruction and ushered in Congressional reform. The Act also legalized suffrage rights for African Americans. The law stated that upon the formation of an approved state constitution “the elective franchise shall be enjoyed by all such persons” regardless of race, color, or previous condition.<sup>7</sup> Additionally, until such a time that the former Confederate states formed approved state constitutions and their representatives were legally admitted to the Congress of the United States, all civil governments “shall be deemed provisional only, and in all respects subject to the paramount authority of the United States...and in all elections to any office under such provisional governments all persons shall be entitled to vote.”<sup>8</sup> African Americans finally gained their political voice.

More African Americans held political office in South Carolina than in any other southern state during Reconstruction. These men served in elected state and national offices that included six members of the U.S. House of Representatives, 29 state senators,

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<sup>5</sup> Ibid., 178.

<sup>6</sup> Ibid., 179.

<sup>7</sup> George P. Sanger, ed., *The Statutes at Large, Treaties and Proclamations of the United States of America, Volume XIV* (Boston: Little, Brown and Company, 1868), 429.

<sup>8</sup> Ibid.

and 210 representatives to the state house of representatives. South Carolinians also elected two black lieutenant governors, one state treasurer, two secretaries of state, one Supreme Court justice, two state land commissioners, and two speakers of the house.<sup>9</sup> African Americans solidified their place in South Carolina politics during the 1868 Constitutional Convention where freedmen not only participated as delegates, but also comprised a majority of the total delegation. Of the 121 total delegates from across South Carolina, 71 were black.<sup>10</sup> This racial imbalance largely reflected the fact that blacks represented not only a majority of the state's population, but also their resolve to be actively involved in the political decisions that determined their future. According to historian Alrutheus Ambush Taylor, these men represented the "first experiment in this country of working out a government based on the cooperation of two races."<sup>11</sup> The question that remained to be seen was whether or not the political momentum that the freedmen had created could be maintained.

African American politicians believed the new Constitution of 1868 provided an opportunity for blacks to advance to a position of equality when compared to whites in South Carolina. B. F. Randolph, a black representative from South Carolina's Orangeburg District voiced his disgust with racial discrimination as he declared, "I want to settle the question forever by making the meaning so plain that a 'wayfaring man, though a fool,' cannot misunderstand it." Randolph argued that African Americans "who have been ground down by three hundred years of degradation, and now that the

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<sup>9</sup> John David Smith, *We Ask Only For Even-Handed Justice: Black Voices From Reconstruction, 1865-1877* (Amherst: University of Massachusetts Press, 2014), 74.

<sup>10</sup> Ibid.

<sup>11</sup> Alrutheus Ambush Taylor, *The Negro in South Carolina During Reconstruction* (New York: Russell & Russell, 1924), 127.

opportunity is afforded, let them be protected in their political rights.”<sup>12</sup> Randolph demanded precision in the language used and proposed that the new South Carolina Constitution make clear that, “Distinction on the account of race or color in any case whatever shall be prohibited, and all classes of citizens, irrespective of race and color, shall enjoy all common, equal and political privileges.”<sup>13</sup> Unfortunately, the clarity Randolph desired never became a reality. In its final version, the 1868 Constitution omitted Randolph’s proposed language and opted instead for the more generic terminology, “All men are born free and equal.” Despite the ambiguity, the Constitutional Convention represented a victory for African Americans, who for the first time represented their own interests in state lawmaking.

Education remained an important issue for African Americans in shaping their new status as freedmen and women. Among its many benefits, literacy diversified the career opportunities for blacks. It also allowed the freedmen the autonomy to participate in politics and to represent their own future social and economic interests. The freedmen understood that without equal access to quality educational facilities, the possibility of a future that included equality with whites remained uncertain. In 1868 black South Carolinians took a step forward towards educational equality as the new state’s constitution declared that “All the public schools, colleges, and universities of the State, supported wholly or in part by public funds, shall be free and open to all the children and

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<sup>12</sup> *Proceedings of the Constitutional Convention of South Carolina* (Charleston: Denny and Perry, 1868), 353.

<sup>13</sup> *Ibid.*

youths of this State, without regard to race, color, or previous condition.”<sup>14</sup> This civil rights victory resulted from the direct involvement of black men in the 1868 Constitutional Convention. As a result of their newfound political power, the freedmen gained the freedom to attend public schools and universities throughout the state and narrowed the civil rights gap between blacks and whites.

The freedmen gained another significant victory when in 1875 Congress ratified “An Act to Protect all Citizens in Their Civil and Legal Rights.” More commonly known as the Civil Rights Act of 1875, the statute proclaimed the “equality of all men before the law... of whatever nativity, race, color, or persuasion, religious or political.”<sup>15</sup> Previously introduced by staunch Radical Republican and anti-slavery advocate, Charles Sumner, many people considered the 1875 act a tribute to his career-long campaign against racial injustice. Sumner passed away the previous year.<sup>16</sup> The law declared the rights of all persons to partake in public amusements such as theatres and inns and allowed for the equal usage of public transportation such as railroads. Any limitations placed upon such accommodations applied to all persons, regardless of race. As a result, the Civil Rights Act increased integration in social settings. The freedmen, however, quickly realized that whenever the races overlapped, the incidence of violence and

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<sup>14</sup> *Proceedings of the Constitutional Convention of South Carolina* (Charleston: Denny and Perry, 1868), 889; *The Constitution of South Carolina and the Joint Resolutions of the General Assembly* (Columbia: John W. Denny, 1868), 23.

<sup>15</sup> *The Statutes At Large of The United States, From December 1873 to March 1875, XVIII* (Washington: Government Printing Office, 1875), 335.

<sup>16</sup> William A. Dunning, “The Undoing of Reconstruction,” *Atlantic Monthly* 88 (October 1901): 442; Eric Foner, *Forever Free: The Story of Emancipation and Reconstruction* (New York: Vintage Books, 2005), 191.



discrimination against them increased. Only a few years later, African Americans lost the legal protection gained by the 1875 Civil Rights Act.

In 1883, the United States Supreme Court declared the 1875 Civil Rights Act unconstitutional. This decision nullified the last civil rights legislation to be passed until the Civil Rights Act of 1964, nearly ninety years later. The case actually represented a series of five discrimination lawsuits. The black plaintiffs claimed they received unequal accommodations within a hotel and theater, and aboard a railroad train, when compared to white persons. The case cited that the 1875 Civil Rights Act prohibited segregation based on a person's race. Judge Joseph P. Bradley authored the eight to one majority opinion that determined the 1875 law to be unconstitutional. Bradley cited that the Civil Rights Act regulated the private conduct of individuals and that the Thirteenth and Fourteenth Amendments only prohibited discrimination by public entities.<sup>17</sup> Justice John Marshall Harlan wrote the lone dissent. Harlan argued "the court's decision was based on a far-too-narrow and artificial interpretation of the amendments." Because the private entities at issue "operated under licenses issued by states...the federal government has both the authority and responsibility to protect individuals from discrimination."<sup>18</sup> This would not be the last time Judge Harlan disagreed with his peers in a Supreme Court ruling on discrimination.

While black men continued to engage in politics throughout the nineteenth century, the freedmen's political activity dwindled towards the later decades. A large part of the freedmen's withdrawal from politics can be associated to the ascension of

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<sup>17</sup> Artemus Ward, Christopher Brough, and Robert Arnold, *Historical Dictionary of the U.S. Supreme Court* (Lanham: Rowman and Littlefield, 2015), 128.

<sup>18</sup> *Ibid.*

Democratic control in South Carolina in 1876 and 1877. Historian Thomas Holt noted that the Republican Government in South Carolina “ultimately failed in its two most important tasks – the task of staying in power, and the task of using that power to solve the most critical problems of its constituents.”<sup>19</sup> Holt argued that political Reconstruction should have succeeded in South Carolina, if anywhere, largely based on the state’s black majority. Holt described the Republican leadership as “socially reactionary” rather than proactive in pursuing economic advances for the black masses.<sup>20</sup> Once in control of the South Carolina Government, the Democratic leadership pursued political policies against the freedmen that included segregation and oftentimes resulted in violence.

W.E.B. Du Bois described black political power as a “losing battle, with public opinion, industry, wealth, and religion against them.”<sup>21</sup> Du Bois believed that white business owners regulated black behavior through economic pressure and used the freedmen’s desire for financial advancement as a means to quiet their political voice. Du Bois noted: “From 1880 onward, in order to earn a living, the American Negro was compelled to give up his political power.”<sup>22</sup> The freedmen subsequently found themselves forced into a position of increased social inequality.

Du Bois described a revival of “caste” that resulted from the freedmen’s forced retreat from politics. He argued that a social divide “has been carefully nurtured and put

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<sup>19</sup> Thomas Holt, *Black over White: Negro Political Leadership in South Carolina during Reconstruction* (Chicago: University of Illinois Press, 1979), 152.

<sup>20</sup> *Ibid.*, 153.

<sup>21</sup> Du Bois, *Black Reconstruction in America, 1860-1880*, 692.

<sup>22</sup> *Ibid.*, 693.

on a legal basis with religious and moral sanctions in the South.”<sup>23</sup> Disguised as “separation” for the good of both races, Du Bois depicted southern society as a “domination of blacks by white officials, white police and laws and ordinances made by white men.”<sup>24</sup> The growing racial divide further solidified the inferior position freedmen held in white society. Regardless of education or upbringing, blacks occupied a social status lower than that of the poorest and most uneducated whites. Separation became a constant reminder to the freedmen “that he lived in a world in which the white man was dominant, and in which the non-white was steadfastly denied access to the higher caste.”<sup>25</sup> Outside of slavery or forced labor through laws such as the Black Code, many white southerners believed the freedmen did not have a place in their society.

As black men withdrew from politics and southern whites continued their attack on the civil rights of African Americans following Reconstruction, the social dynamic between blacks and whites also continued to change. As slaves and then as freedmen under the Black Code, the nature of a largely agricultural-based society necessitated proximity between the races that bound white and black men together. No longer legally tied to the land, a historical union nonetheless defined by closeness soon became one of disassociation. The separation of the races accelerated fastest in their private lives, where blacks associated most often with their own race. The freedmen preferred black-run businesses, worshipped, and socialized amongst themselves.

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<sup>23</sup> Ibid., 694.

<sup>24</sup> Ibid., 695.

<sup>25</sup> Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877*, 276.

Whites also chose to interact exclusively with each other whenever possible. As African Americans became more entrenched in South Carolina state politics, some whites alluded to a complete withdrawal from the potential of integration. University of South Carolina professor Joseph Le Conte commented on the weakening of the southern states “by the prospect of Negro supremacy...that everyone is at least making inquiries in anticipation of being compelled to leave for more favored regions.”<sup>26</sup> No doubt Professor Le Conte reacted favorably when, on June 7, 1877, the South Carolina Legislature passed an act to “reorganize” the University of South Carolina. The law created a pathway for the establishment of “one university or college for the white and one for the colored youths of the State...kept separate and apart.”<sup>27</sup> One by one, de jure segregation eroded the civil rights only recently gained by the freedmen.

Many southern whites simply refused to engage in activities that included the freedmen. Over 10,000 South Carolina white men refused to vote in the elections of 1870 because the ballots “recognized the political existence of the Negro.”<sup>28</sup> Whites also declined to participate in various civic activities and avoided public spaces that allowed integration.

While the freedmen often had the option to frequent black-run businesses or worship at black churches, public transportation left few options. Black and whites had no choice but to use the same railroad and streetcars, which often led to increased tensions between the races. Under these circumstances, traditional white ideologies of

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<sup>26</sup> Ibid., 288.

<sup>27</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Extra Session of 1877* (Columbia: Calvo and Patton, 1877), 315.

<sup>28</sup> Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877*, 289.

racial intolerance such as the fear of miscegenation influenced both the customs and laws of the postbellum South. A long-standing fear of black male sexuality and a belief in the purity of white females led to increased pressure from whites for racial separation. When black men sought equal accommodations in first class or “ladies” railroad cars, whites answered with an unwillingness to cross this longstanding racial and sexual boundary. De facto segregation became commonplace with black men relegated to second-class accommodations. In these discriminatory railroad cars, “The floors were thick with spit and tobacco juice, the air thick with smoke and vulgarities.”<sup>29</sup> The second-class cars had hard seats and no drinking water for the passengers.

African Americans, however, refused to concede their civil rights and throughout the South freedpeople fought for equality. In some cases, blacks effectively utilized the law and gained equal, but often separate accommodations aboard railroad cars. Legalized railroad segregation occurred later in South Carolina than it did in the majority of the southern states. Ratified on February 19, 1898, the South Carolina legislature mandated separate coaches or sections within coaches, known as apartments, for white and colored passengers. The law required “Equal accommodation shall be supplied to all persons, without distinction of race, color or previous condition.”<sup>30</sup> In reality the cars were separate and almost always unequal. Jim Crow laws such as the railroad act further perpetuated an institution of legalized discrimination that endured for more than a half century.

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<sup>29</sup> Smith, *When Did South Segregation Begin?* 88.

<sup>30</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1898* (Columbia: State Printer, 1898), 777.

The 1898 railroad segregation law built upon a growing trend of de jure segregation throughout the South. Two years earlier, the United States Supreme Court handed down the landmark decision in the case of *Homer Adolph Plessy v. Judge J. H. Ferguson*. After refusing to sit in a Jim Crow railroad car, Plessy appeared in front of Judge Ferguson in Louisiana Criminal Court for violation of the state law that permitted segregation of railroad passenger cars. Judge Ferguson ruled against Plessy who subsequently appealed the decision in the nation's highest court. The Court ruled by a vote of seven to one that the state law did not discriminate against Plessy as long as said facilities were both "separate, but equal." Again only Supreme Court justice Harlan ruled in dissent, citing "Our Constitution is color-blind." Judge Harlan believed the decision by the Court supported the conviction of southern whites that they represented the "dominant race."<sup>31</sup> The case of *Plessy v. Ferguson* set the stage for future legislation, designed solely to discriminate against African Americans and keep them subordinate to whites.

The courtrooms and political halls were not the only tools that southern whites used to suppress the rights of African Americans. Radical militarized groups such as Ku Klux Klan used terror and intimidation in an effort to restore white supremacy to the South. Du Bois described the Klan's activities as "Using a technique of mass and midnight murder, the South began widely organized aggression upon the Negroes."<sup>32</sup> Founded in Tennessee in December 1865, the Ku Klux Klan quickly spread throughout the southern states and impacted all aspects of southern life. The Klan reached widespread prevalence in South Carolina by 1868. By using violence to enact political

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<sup>31</sup> Foner, *Forever Free: The Story of Emancipation and Reconstruction*, 208.

<sup>32</sup> Du Bois, *Black Reconstruction in America, 1860-1880*, 674.

change, the Klan sought to destroy the influence of the Republican Party and undermine its efforts during Reconstruction.

Klan violence was particularly disruptive in the piedmont region of upstate South Carolina. In these areas, blacks did not represent a majority of the population as they did in the low country and thus offered less resistance to Klan activity. Moreover, these regions lacked the number of Republican leaders seen in Charleston or Georgetown Districts whose political influence might challenge Klan rule. These Republican leaders also bridged the political gap for the local, often time's illiterate black population. Fewer leaders meant that each man, when available, played a significant role in not just politics, but also in school, church and community organization leadership. Under these conditions "the killing or exiling of one man affected many institutions at once."<sup>33</sup>

Perhaps no historian captured the senselessness of Klan activity as succinctly as Du Bois when he noted that, "The reasons given for the Ku Klux outrages were significantly varied: the victims should suffer in revenge for killing, and for some cases of arson; they were republicans; they were radical; they attempted to hold elections; they were carrying arms; they were 'niggers'; they were 'damn niggers'; they boasted that they would own land."<sup>34</sup> Freedmen who achieved some measure of economic or social success became a particularly favorite target of white supremacist groups like the Klan. Night Riders killed an African American in Florence, South Carolina who simply rented farmland, citing that such behavior "ought not to be."<sup>35</sup> Klan activity in the state peaked

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<sup>33</sup> Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, Publishers, 1988), 442.

<sup>34</sup> Du Bois, *Black Reconstruction in America, 1860-1880*, 676-677.

<sup>35</sup> Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, 429.

following the 1870 elections when Republicans retained political control throughout the Piedmont region. In January 1871, five hundred whites stormed a Union county jail and lynched eight black prisoners. That same year in York County, South Carolina, nearly every white man joined the Klan.<sup>36</sup>

Among the most notorious and cruel of crimes against a black man, Elias Hill, who was handicapped, suffered at the hands of white men for being of “an intelligent mind; had learned to read; and had acquired an unusual amount of knowledge for one in his circumstances. He was highly respected for his upright character... and greatly revered by the people of his own race. It was on this ground that he was visited by the Ku Klux, brutally beaten and dragged from his house into the yard, where he was left in the cold at night, unable to walk or crawl.”<sup>37</sup> Such actions proved the willingness of Klan members to cross any boundary of humanity to accomplish their objectives.

Klan members also utilized other tactics aside from physical violence. Intimidation became an effective strategy, especially when it came to influencing black voters. Writing in 1901, William A. Dunning described Klan activity where “white men, with ropes...rode up to a polling place and announced that hanging would begin in fifteen minutes.” Additionally, Klansmen on horseback might appear “firing guns and yelling at no one in particular” following rumors of violence against local blacks. Because the Klansmen made no specific reference to violence against any distinct individual or group of individuals, charging Klan members of any wrongdoing rarely occurred.<sup>38</sup> The

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<sup>36</sup> Ibid., 431.

<sup>37</sup> Du Bois, *Black Reconstruction in America, 1860-1880*, 675-676.

<sup>38</sup> Dunning, “The Undoing of Reconstruction,” 440-441.



connivance of white justice perpetrated extralegal Klan violence and contributed to the resurgence of white supremacy on the local level.

The systematic and legalized disenfranchisement of black voters became commonplace throughout the South following Reconstruction. In 1882 white South Carolinians implemented what became known as the Eight Box Law as a means to exploit freedmen illiteracy. The law required the use of a separate ballot box for each of the following eight elected offices: 1. Governor and Lieutenant Governor. 2. Other State officers. 3. Circuit Solicitor. 4. State Senator. 5. Members of the House of Representatives. 6. County officers. 7. Representatives to Congress. 8. Presidential Electors.<sup>39</sup> Election managers labeled the boxes with a name according to the candidates running for each office. This process required black voters to select the appropriate box to submit separate ballots for each candidate. Failure to do so resulted in the individual's vote not counting. The statute also allowed only the designated election manager to speak to the voter. Doubtless white election managers offered little objective support to black voters.

The freedmen's economic condition also became a weapon that southern whites used to proscribe blacks from voting. In the same congressional session that created the Eight Box Law, legislators also passed a statute that required the payment of a poll tax for all eligible voters. The tax mandated voters between the ages of twenty-one and sixty to pay a tax equal to one dollar per year.<sup>40</sup> Failure to do so resulted in a misdemeanor charge and a fine of up to ten dollars. While a seemingly minimal expense, the tax

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<sup>39</sup> *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Sessions of 1881-82* (Columbia: James Woodrow, State Printer, 1882), 1117.

<sup>40</sup> *Ibid.*, 1070.

placed a disproportional burden upon African Americans whose economic status fell far short of most whites.

Less formalized strategies aimed at African America disenfranchisement included placing polling locations in remote areas (away from black communities) and changing polling locations without notification. Professor Dunning noted that during elections bribery was “too common to excite comment.”<sup>41</sup> Regardless of the methods used to limit the freedmen’s vote, South Carolina whites sought to “reduce the colored vote to insignificance in every county in the state and to make clear that the white South does not desire or intend ever to include black men among its citizens.”<sup>42</sup> Most African Americans in the South would not regain suffrage rights until the ratification of the Voting Rights Act of 1965. By losing the vote, the freedmen became virtually defenseless in their fight for racial equality.

For generations, southern whites feared racial insurrection and created laws aimed at trying to prevent it. White men believed that in order to prevent an uprising, blacks must remain subordinate and unarmed. Both the South Carolina slave code of 1740 and the 1865 Black Code contained provisions against insurrection with penalties that included death for anyone convicted.<sup>43</sup> Both sets of laws also largely prohibited blacks from possessing firearms. Moreover, the Black Code mandated that “Persons of Color

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<sup>41</sup> Dunning, “The Undoing of Reconstruction,” 444.

<sup>42</sup> Eric Foner, *Forever Free: The Story of Emancipation and Reconstruction*, 207.

<sup>43</sup> David J. McCord, ed., *The Statutes at Large of South Carolina, Volume VII*, 402; *The Statutes at Large of South Carolina, Volume XIII*, 246.

constitute no part of the militia.”<sup>44</sup> The repeal of the Black Code did little to change the traditional beliefs of most white South Carolinians.

When Governor Robert Kingston Scott of South Carolina revitalized the state militia in 1870-71, local whites refused to serve with blacks as equals, let alone serve under the command of African Americans. The resulting all-black militia drew the attention of Klan members, who responded with violence. Known as the Ku Klux riots, Klan terrorism constituted a large-scale, systematic attempt on the part of local whites to disarm black military units. Violence occurred most often in those regions where blacks were the most heavily armed. These included the Piedmont regions of Spartanburg, Newberry, Union, Chester, York, Fairfield, Kershaw, and Edgefield Districts. With limited arms to distribute throughout the state, Scott armed blacks in those districts where Ku Klux violence threatened to disrupt the Republican majority during the election of 1870.<sup>45</sup> Although Republicans maintained political control of the state following the election, the Ku Klux riots represented yet another attempt by white South Carolinians to deny African Americans equal rights under the law.

Widespread discrimination and segregation were not new phenomena in this country. Segregation existed for generations before Jim Crow above and below the Mason-Dixon Line. During his travels throughout America in 1831 Alexis de Tocqueville declared: "The prejudice of race appears to be stronger in the states that have abolished slavery than in those where it still exists; and nowhere is it so intolerant as

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<sup>44</sup> *The Statutes at Large of South Carolina, Volume XIII*, 250.

<sup>45</sup> Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877*, 262.

in those states where servitude has never been known."<sup>46</sup> Likewise, in *The Strange Career of Jim Crow* (1955), C. Vann Woodward noted, "Whites of South Boston boasted in 1847 that 'not a single colored family' lived among them. Boston had her 'Nigger Hill' and her 'New Guiana,' Cincinnati her 'Little Africa,' and New York and Philadelphia their comparable ghettos-for which Richmond, Charleston, New Orleans, and St. Louis had no counterparts."<sup>47</sup> Longstanding ideologies regarding race that existed throughout the country influenced both the creation and spread of Jim Crow.

The end of Reconstruction brought about a shift in northern political interests and provided an opportunity for the spread of racial discrimination. The removal of northern troops from the South in 1877 also left African Americans largely in the hands of a dwindling number of sympathetic politicians to provide some measure of legal protection. To this extent Woodward argued, "The South's adoption of extreme racism was due not so much to a conversion as it was to a relaxation of the opposition."<sup>48</sup> White Americans became engrossed with not only the political events within their country, but also how American politics influenced the world abroad.

American imperialism further unified the country's white population on the subject of race and its interpretation of racial hierarchy. As the United States increased its political interests in the Philippines, the Caribbean, and Hawaii, racial bias also expanded. In 1901, the editor of the *Atlantic Monthly* drew a correlation between the events both domestic and abroad and questioned that; "If the stronger and cleverer race is

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<sup>46</sup> Alexis De Tocqueville, *Democracy in America*, translated by Henry Reeve, Esq. (New York: George Adlard, 1839) 357.

<sup>47</sup> C. Vann Woodward, *The Strange Career of Jim Crow* (1955: reprint, New York: Oxford University Press, 2002), 19.

<sup>48</sup> *Ibid.*, 69.

free to impose its will upon ‘new caught, sullen peoples’ on the other side of the globe, why not in South Carolina or Mississippi?”<sup>49</sup> Drawing on the same conclusions, South Carolina Senator John J. McLaurin thanked Senator George F. Hoar of Massachusetts “for his complete announcement of the divine right of the Caucasian to govern the inferior races,” a position which most amply vindicated the South.<sup>50</sup> Woodward noted that, “At the very time that imperialism was sweeping the country, the doctrine of racism reached a crest of acceptability and popularity.”<sup>51</sup> Given the growing American perception of white superiority, is it any wonder that racism and discrimination not only maintained, but evolved throughout the South following emancipation?

The fears and prejudices of southern whites combined with the traditional belief of African American inequality did not justify the creation of the South Carolina Black Code, but rather these circumstances certainly made its existence “predictable.”<sup>52</sup> When the guns of the war had barely cooled, southern whites publically and brazenly used the codes to define African Americans as different, inferior, and incapable of self-government. This precedent permeated the South for generations. In his monograph on the southern codes, historian Theodore Brantner Wilson reminded the reader that outside of slavery “there had been special laws regarding free Negroes since the seventeenth century.”<sup>53</sup> Faced with the integration of four million former slaves following

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<sup>49</sup> “Reconstruction and Disfranchisement,” *Atlantic Monthly* 88 (October 1901): 435; Woodward, *The Strange Career of Jim Crow*, 72.

<sup>50</sup> Woodward, *The Strange Career of Jim Crow*, 73.

<sup>51</sup> *Ibid.*, 74.

<sup>52</sup> Wilson, *The Black Codes of the South*, 147.

<sup>53</sup> *Ibid.*, 142.

emancipation, white southerners refused to accept African Americans as equals and instead sought both legal and extra-legal means to impose their will upon the freedmen. South Carolina's white leadership understood that the Black Code hindered their state's chances for reentry into the union and yet they proceeded to enact it regardless. The Black Code represented their first attempt to control the newly freedpeople, to keep them as close to the status of slaves as possible. It would not be their last.

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