RACIAL SEGREGATION DURING RECONSTRUCTION:

THE EVOLUTION OF LAWS AND PRACTICES

IN THE SOUTHERN STATES

APPROVED:

Jack E. Larrabe
Major Professor

George W. Lindsey
Minor Professor

Frank H. Peterson
Director of the Department of History

Robert B. Toulouse
Dean of the Graduate School
RACIAL SEGREGATION DURING RECONSTRUCTION:
THE EVOLUTION OF LAWS AND PRACTICES
IN THE SOUTHERN STATES

THESIS

Presented to the Graduate Council of the
North Texas State College in Partial
Fulfillment of the Requirements

For the Degree of

MASTER OF ARTS

By

Paul Charles Palmer, B. A.

Denton, Texas
August, 1958
PREFACE

The problem of inter-racial social relations has long been an important one in the United States. In recent years it has become increasingly vital due to renewed conflicts concerning the use of public education and transportation facilities. Unfortunately the history of the problem throughout its evolution has not been thoroughly investigated. A more complete understanding of that development appears to be necessary if the present dilemma is ever to be resolved. Since the basic issue involved is the enigma of second class citizenship, it would seem that the origins of the problem should be sought in the earliest days of Negro citizenship. The period of reconstruction must therefore serve as a starting point. It is in that period that the problem has been least explored. Historians of the reconstruction period have concerned themselves almost exclusively with the myriad other problems of that controversial era.

In the last decade a few works have been produced which deal to some extent with the development of present practices concerning social contacts between whites and Negroes. None, however, claim to have discovered all the material necessary to establish a clear picture. The task of determining the origins of the question of racial segregation has not even
been approached. Leading historians have recognized the need for continued investigation in that area. It is with the hope of adding new information toward determining the origins of this vital problem and in the process dispelling some of the misconceptions recurrent in other works on the subject that the following monograph has been prepared.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREFACE</td>
<td>iii</td>
</tr>
<tr>
<td>I. THE STATUS OF SEGREGATION PRIOR TO EMANCIPATION</td>
<td>1</td>
</tr>
<tr>
<td>II. RACE RELATIONS IN PUBLIC EDUCATION</td>
<td>15</td>
</tr>
<tr>
<td>III. RACIAL BARRIERS IN PUBLIC ACCOMMODATIONS</td>
<td>34</td>
</tr>
<tr>
<td>IV. BARRIERS AGAINST MISCEGENATION</td>
<td>48</td>
</tr>
<tr>
<td>V. REDEMPTION AND REACTION</td>
<td>63</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>78</td>
</tr>
</tbody>
</table>
CHAPTER I

THE STATUS OF SEGREGATION PRIOR TO EMANCIPATION

During the ante-bellum period a unique characteristic of the southern states was their rigid class structure. At the top of this structure was the planter class, composed of those holding numerous slaves and large estates. At the bottom of the social scale was the Negro. Every white was the social superior of the Negro whether he was slave or free. The stigma of inferiority was inevitable and inescapable, regardless of talent or ambition.

Insofar as the whites were concerned, the basis of the southern class structure was property ownership. To some extent this criterion applied also to Negroes. A Negro slave was himself the property of his master. As such, he was legally disqualified from holding any property of his own, and consequently occupied the lowest status of the social scale. The position of the free Negro presented an obvious inconsistency within the southern oligarchy; regardless of property ownership his status was below that of the lowest white. Social discrimination against the free Negro was justified on the basis of racial inferiority, which mode of justification naturally extended also to the slave.
By the decade of the 1850's the theory of the innate inferiority of the African had become widely accepted and had been long and often propounded as justification for the institution of slavery. The idea of racial inferiority had become so ingrained in southern minds, that a complex system of laws and mores had grown up whose sole purpose was to protect the supposedly superior white race from the encroachments of the inferior black race. The provisions of this caste system required varying degrees of racial separation in almost every area of human relations from public entertainment to the institution of marriage to the end that neither Negro nor white could ever forget his respective position. No Negro should ever be allowed to consider himself the equal of any white; the institutions of the South depended on the universal adherence to this rule.

Undoubtedly the area of inter-racial relations considered most important by the ante-bellum white was in the field of sexual and marital relations. The presumed natural inferiority of the Negro made this concern mandatory if the white race were to maintain its superiority. In addition to this was the fear that the possibility of intermarriage would give the Negro a feeling of equality and made his continued enslavement more difficult. Consequently, marriage between a Negro and a white was a thing almost unheard of in the ante-bellum South.
Regardless of this fact and the fact that no Negro could ever act with impunity against the will of the whites, several state legislative bodies felt a necessity for levying stringent laws on the subject of miscegenation. Those laws took various forms. One made execution by hanging a mandatory punishment for the rape of a white woman by a Negro, another made adultery between persons of different races a felony. Others simply forbade intermarriage. The Alabama legislature in early 1814 made the rape of a white woman by a Negro a capital crime.¹ Within the three following decades the same body restated the law twice in different and stronger terms.² The state of Tennessee, in 1822, enacted a statute forbidding marriage between a white person and person of Negro ancestry to the third generation.³ North Carolina, Florida, and Texas all passed similar laws between 1830 and 1837, not, however, including the stipulation, "to the third generation".⁴ Of these states only Texas included in the law a prescribed punishment, added in 1856. That law stated that parties to an interracial marriage would be subject to imprisonment for from two


²Ibid., pp. 328, 186. None of the southern states recognized the rape of a Negro woman to be criminal.

³Ibid., p. 393.

⁴Ibid., pp. 335, 383; H. P. N. Gammel, editor, Laws of Texas, 1822-1897, (Austin, 1898), I, 1294-5.
to five years. The same Texas law also made cohabitation be-
tween Negroes and whites unlawful and punishable by the same
penalty. The state of Georgia had no statute forbidding
intermarriage but did provide for the punishment of adultery
between white and Negro persons in a law of 1852. Apparently,
however, a colonial statute, dating from 1750 and not
allowing inter-racial marriage, was still enforced. Other
slave states, such as Maryland, had similar colonial laws
which had never been re-enacted after the formation of the
United States.

At first glance it seems strange that only six of the
fifteen slave states had definite legislation forbidding inter-
racial sexual relations. That fact should not, however, be
interpreted to suggest leniency. It is rather a testimony to
the complete subjection of the ante-bellum Negro. Whether or
not such legislation existed, few indeed were the Negroes who
dared approach a white woman.

On the other hand, it cannot be said that white men were
subject to any such timidity in their relations with their
female slaves. If no other evidence were available to give

6 Farnam, p. 349.
7 Ibid., p. 339.
8 Murray, p. 208.
substance to that contention, the existence of approximately
two hundred thousand mulattoes in the ante-bellum South
should be sufficient proof. Other less substantial proof is
abundant. William Johnson, free Negro of Natchez, Mississippi,
reported three cases of white men in sexual relations with
Negro women. Two of those cases were obviously only casual
relations: "A Mr. ____ was caught in bed with Mr. Parkers
old Big Black woman Buster and a Mr. [blank] was Caught in
bed with old Lucy Brustie, Hard times indeed, when Such things
Occur." 9 The other case was a rather unusual love triangle
involving an overseer, his Negro "wife" and a pregnant white
woman. Evidently the inter-racial marriage was not considered
legally binding. 10

In slave accounts of ante-bellum days it is not at all
unusual to find such statements as "my old master was my
father" or "his darkies had chillen by him . . . ." 11 Some
of the Negro women apparently welcomed such contacts and felt
honored; others succumbed to white men's demands against their
wills, some cooperated not at all. 12 Many times plantation

9 William Johnson, William Johnson's Natchez, the Ante-
10 Ibid., p. 98.
11 Fisk University, The Unwritten History of Slavery,
12 Ibid., pp. 51, 118, 208.
diaries contained the notation that an overseer had been fired for sleeping in the slave quarters, and owners' wills not uncommonly contained provisions for the manumission of mulatto children born of a slave mistress. One ex-slave made the rather unique claim that he was the second cousin of Abraham Lincoln, born of a slave mother. In some cases inter-racial sexual associations were reduced to a socially accepted formula, as witnessed by the well-known system of quadroon and octoroon concubinage in New Orleans and elsewhere. In other cases white men so engaged were subject to social ostracism. Authorities on the subject of American Negro slavery agree that a certain amount of inter-racial sexual relations was the natural and inescapable result of "the peculiar institution".

Cases of such association between Negro men and white women seem to have been less common and were certainly less openly discussed. They did, however, exist. Frederick Law Olmsted was told by a southern white man, "There must always be women of the lower class of whites, so poor that their favors can be purchased by slaves." The implication being

---

13 Ibid., p. 86.
14 Ibid., p. 34.
that only the lowest "po' white trash" would engage in such nefarious conduct. 16 A more respectable woman discovered in such a compromising situation could always claim she had been taken by force, "but the evidence was not always very convincing." 17 Cases were not unknown in which a white woman loved her colored paramour enough to live with him as a common-law wife. One case of such devotion involved a white woman of Granville County, North Carolina, who drank the blood of her Negro lover so that she might swear she had Negro blood and be married to him. 18

The southern white men dreaded the possibility of such usage of their women. Hence, Olmsted was met in Alabama with what was then a time-worn query; "How would you like to hev a nigger steppin' up to your darter?" 19 James Buckingham, another noted traveller, recounted the widespread horror felt in a southern town when a young white girl was thought to have born a "mule", whereas no one was concerned if a black mother bore a brown child. 20 In matters of miscegenation the South

17 Stampp, p. 352.
19 Olmsted, p. 573.
was subject to a most peculiar double standard of behavior, a standard based on advantage and opportunity rather than justice or morality.

Negroes were subjected to enforced separation in areas other than marital relations. Some segregation was practiced in public transportation, although it was by no means universal. Since the Negro almost always traveled in company with his master or on his master's business, his position as an inferior was always apparent, and his presence aroused little resentment. Olmsted observed in 1852, "The railroad company advertise to take coloured people only in second-class trains; but servants seem to go with their masters everywhere."  

Other instances seem to support Olmsted's belief that such was the general practice. According to the statements of ex-slaves, Negroes could travel by boats with their masters, and Negroes and whites rode side by side on the horse cars of southern cities. Some southerners attempted to convince the people of the North that Negro slaves were always accorded the most undiscriminating consideration on public conveyances, whether accompanied or not. Such was not the case, however. J. Benwell reported one instance of a slave's being refused admission to a railroad car although he had a ticket and was

---

21 Olmsted, p. 18.
22 Fisk University, pp. 18, 102.
23 Olmsted, pp. 316-7.
about his master's business. Another case cited by Benwell is even more convincing. While stopping at the Greenborough railway terminal en route to Charleston, the train on which Benwell was traveling took on two male Negroes. After having been admitted, "they were . . . shut in a box in the rear of the train. . . ." Whether this case is typical or not is difficult to determine, but it is obvious that the unaccompanied slave was much more subject to such discrimination than were those who traveled with their masters or other members of the master race.

The situation of the free Negro in regard to public transportation in the ante-bellum South presents an enigma of the southern caste system. Perhaps that was simply because the general movements of a free Negro were less regulated, for his emigration would not mean loss of property as in the case of a slave. The allowance of free Negroes to ride unattended on the railroads of Texas led one citizen to register a complaint in a letter to a Galveston newspaper. William Johnson, free Negro diarist of Mississippi, told of riding unattended on almost every type of conveyance imaginable, not only in Natchez, where he was well known, but in and around New Orleans as well.

---

25 Ibid., p. 173.
26 Galveston *Tri-Weekly*, January 15, 1856.
27 Johnson, p. 441.
Olmsted reported that in North Carolina a free colored woman rode on the same stage coach with him and was treated quite well, although he doubted that such treatment was customary.\textsuperscript{28} Buckingham told of two mulatto women on a steamboat on the Alabama River who were apparently on an equal footing with the whites aboard, except that they were not allowed a state-room and ate at a separate table.\textsuperscript{29}

Another area of social contact in which Negroes were allowed a great deal of latitude was in places of public entertainment, especially outdoor shows. Negroes, both slave and free, were apparently always allowed in carnivals or circuses, sometimes at half the admission price for whites.\textsuperscript{30} In the case of indoor entertainment, the regulations seem to have been more stringent. William Johnson, who regularly attended the theatre in Natchez, was always required to sit in a balcony reserved for Negroes.\textsuperscript{31} By the provisions of a Mississippi statute of 1822 Negroes were barred from being entertained at inns.\textsuperscript{32} That restriction apparently was not always enforced, however, as Johnson reported having won a raffle at such a place and treating those present to champagne.\textsuperscript{33}

\textsuperscript{28}Olmsted, pp. 315-6. \textsuperscript{29}Buckingham, I, 479-81.
\textsuperscript{30}Harrison A. Trexler, \textit{Slavery in Missouri, 1804-1865}, (Baltimore, 1914), p. 94; Johnson, p. 215.
\textsuperscript{31}Johnson, pp. 54, 114.
\textsuperscript{32}Farnam, p. 373.
\textsuperscript{33}Johnson, p. 33.
In other places of public resort the degree of segregation was fairly flexible. Negroes were in some cases admitted to treatment in white hospitals and were generally allowed to reside with their masters in hotels.\textsuperscript{34} On the other hand, whites and colored were usually housed separately in the jails of the South.\textsuperscript{35}

Separate burial grounds for whites and Negroes were provided for by law in only two states. Mississippi required separate cemeteries in 1818.\textsuperscript{36} However, in that very state William Johnson was buried in a cemetery reserved for whites.\textsuperscript{37} Georgia had in its statute books a colonial law requiring the establishment of Negro cemeteries but not explicitly requiring separation.\textsuperscript{38} In other places whites and colored were buried in the same cemeteries but had separate areas reserved for each race.\textsuperscript{39}

A major remaining area of social contact was public education. In most of the states of the South this question was summarily solved by barring Negro slaves from obtaining an education, either by law or tradition. A formal education was considered unnecessary and even harmful to the laboring qualities of a slave. Not only that, but education would make the

\begin{flushright}
\textsuperscript{34} Richmond Daily Dispatch, January 24, January 26, January 28, 1860.
\textsuperscript{35} Buckingham, I, 166-7.
\textsuperscript{36} Farnam, p. 372.
\textsuperscript{37} Johnson, p. 59-60, f.n.
\textsuperscript{38} Farnam, p. 340.
\textsuperscript{39} Fisk University, pp. 135-6.
\end{flushright}
continued subjection of the Negro increasingly problematical. Another objection often raised was that the Negroes simply were not educable. Free Negroes were also generally denied an education although there were exceptions in their case. However, even where free Negroes were allowed to be educated, they were wholly barred from white schools. As a general rule public education was probably the most thoroughly segregated area of social contact in the South throughout the final decades of the institution of Negro slavery.

Instances of mandatory racial segregation and voluntary inter-racial contact in areas other than those already mentioned were abundant in the old South. Churches were almost universally integrated, largely due to fear of insurrection and consequent laws requiring responsible whites to be in attendance at all Negro assemblages. The races were separated nonetheless by placing the Negroes in galleries or other areas reserved for them. At least two of the slave states punished by fine or imprisonment Negroes and whites who played at games of chance together. There existed an almost universal taboo against Negroes and whites eating or drinking together. Yet, with all the forces at work to keep the races

\footnote{Ulrich Bonnell Phillips, American Negro Slavery, (New York, 1918), p. 448.}

\footnote{Buckingham, II, 273-5.}

\footnote{Farnam, p. 348; Laws of Texas, IV, 1459.}
separate, cases of close voluntary contact were extremely common in almost all phases of southern society. White and colored children often played together not recognizing the stigma of color. Occasionally wealthy free Negroes entertained whites in their homes. On small farms master and slave often shared the same house. Free Negro seamen were seldom subject to segregation in their work except by relative degrees of seamanship. The force of practicality often served to counter-balance doctrine.

On the whole racial relations in the ante-bellum South were harmonious but were always subject to one qualifying factor. Regardless of what degree of intimacy or endearment modified the relations between white and black, the Negro must always be an inferior; "for slavery, by its nature, could never be a relationship between equals." The South was accustomed to its institutions and traditions and somehow seemed to feel that they would never end. The outcome of the Civil War destroyed that complacency. Whereas the Negro had never before been considered more than a chattel or at best a decidedly inferior being, he was suddenly elevated to candidacy for complete equality, both social and legal.

\[43\] Olmsted, p. 113.  
\[44\] Buckingham, I, 211-2.  
\[46\] Buckingham, II, 471-2.  
\[47\] Stampp, p. 327.
With the abolition of slavery, the entire structure of social relations in the South was changed. The Negro's status had to be redefined and a new system of relations established.

The emancipation of four millions of negro slaves is in itself a revolution of which the world has seldom seen the like, either in magnitude in suddenness and completeness, in the desolation of war amidst which it was accomplished or in the influence of its ulterior results on the future of mankind.48

Such was the observation of Robert Somers, one of the many people who wrote accounts of the South after the war, concerning the great problem which faced that region upon the emancipation of the slaves. It was a problem of such complexity and magnitude that it could be permanently solved only through prudent and sympathetic action by all concerned. The laws and other actions concerning race relations in areas of social contact formed an interesting and important phase in the development of the legal framework redefining the status of the freed Negro.

CHAPTER II

RACE RELATIONS IN PUBLIC EDUCATION

A distinctive characteristic of the ante-bellum South was its lack of adequate state systems of public education. This lack was due largely to the abiding desire for economy in government on the part of the southern propertied class. The members of the slave oligarchy had almost always provided private or foreign education for their offspring and were unwilling to assume the increased tax burden necessary for a system of free schools which would have been superfluous so far as they were concerned. The poorer classes of the South were unable to provide private education or to withstand the increased taxation which would have been necessary for a free system. There were "poor schools" available throughout the South, but they were scattered, inadequate, and stigmatized. Hence, a great percentage of the southern whites was illiterate; education was obviously one of the direst needs of the South.

Among the Negroes illiteracy was almost universal, but much more excusable than in the case of the whites. Slavery had denied to the Negro the right to acquire an education; an educated Negro was a burden to the institution of slavery, constantly under suspicion and subjected to the petty jealousies
of ignorant whites. Yet, some Negroes, though a minute per-
centage, did strive clandestinely to exercise their intellectual
capacities, either alone or aided by some humane white, and a
few mastered the arts of reading and writing. A still smaller
group managed to reach intellectual heights comparable to
those of the trained white scholars.

Regardless of the exceptions, education was one of the
most pressing of all southern needs. Following southern de-
feat, educational institutions of all types were established
in attempting to fill this need. Often northern teachers fol-
lowed Union armies, establishing schools as soon as rebel
strongholds fell. Afterward came the freedmen's schools, pri-
vate schools, church schools, and finally, under the Radical
governments, the first adequate systems of public education,
financed by state taxation.

The question of racial association in education presented
one of the most controversial problems to be faced in estab-
lishing schools in the conquered South. No one seemed to know
what the official position of the conquerors would be. Were
the Negroes simply to be freed and become slaves in all but
name, without the rights and privileges of citizenship, or
were they to be raised immediately to a position of social and
legal equality? Or was there to be established some middle
ground, a limbo of inferior manhood similar to that of the
ante-bellum free Negro? An unequivocal answer was not to be
provided for several years.
Some of the more radical Union commanders provided a temporary solution to the puzzle. In at least two cases Union officials attempted to establish social equality with regard to education immediately upon gaining control of Confederate territories. As early as 1862, even before the Emancipation Proclamation was issued, the Superintendent of Education for Florida, under the command of the United States general in charge, opened a public school in Jacksonville for the accommodation of Negroes and whites alike. The confiscated Odd Fellows Hall was provided for this purpose. After some minor protests on the part of the white children, the school functioned effectively, and the two races "got along harmoniously." When the school did fail two years later, the reasons given had no racial basis. When it was reopened, however, a new superintendent was in charge, and a separate school had been established for Negro students.  

The other instance in which integrated education was established by a Union military commander was in Charleston, South Carolina. By order of Colonel Woodford, Commander of the Port of Charleston, integrated schools were opened on March 4, 1865, under Superintendent James Redpath. Even though they were to be taught in separate class-rooms, only three hundred white children enrolled, as compared to twelve hundred

---

Negro children. After only six days of operation the system had apparently won the approval of many Charlestonians. The editor of the Tribune wrote:

The loyal white people—the Irish and German population, have shown, that they are quite willing to let their children attend the same school with the loyal blacks; although it is true, that no attempt to unite them in the same room or classes would have been tolerated at the time. But in the playgrounds, white and black boys joined in the same sports as they do in the public streets; and there can be no doubt that now that this great step has been made, all the prejudice against equal educational advantages will speedily vanish, and indeed, it is the veriest hypocrisy in the city where very old families have aided in obliterating all the complexional distinctions by mingling their blood with that of their slaves. 3

Within a short time the system had grown from five to nine day schools, and enrollment had increased to over three thousand. 4 With the opening of the fall term, however, this remarkably successful enterprise was returned to the control of the former Confederates. Integrated education immediately ceased. The Negro students, who had far outnumbered the whites, were removed into a single school, where they were to be taught only by native whites. 5

---


3 Charleston Tribune, March 10, 1865, quoted in DuBois, p. 643.


5 Taylor, pp. 326-7.
When the defeated rebels became aware of the fact that the presidential program of reconstruction would allow them a great deal of freedom in administering their respective states, they began to adopt laws and practices designed to retain the Negro in an inferior social and political position. Separate schools was one of the means employed by southern conservatives to impress upon the Negro his social inferiority. The prompt desegregation of the aforementioned schools is testimony to that contention. There were also instances of such action in other states.

In the state of Georgia only free white inhabitants were provided with public education facilities. The Negroes were forced to turn elsewhere if they desired to be taught. For the most part the burden of educating the Negroes was left to the Freedmen's Bureau and northern philanthropy. The Negroes, in addition, attempted to create some educational system of their own, since they were denied public support. In Savannah they founded the Savannah Educational Association and supported it with their own donations. In the schools of that association only Negro teachers were employed and only Negro children taught. By the end of 1865 over three hundred and fifty of the twelve hundred Negro students in Savannah were


7Ibid., p. 124.
attending the schools of that organization. In this case the Negroes had no alternative; either they accepted separate facilities provided by themselves and outsiders, or they had no facilities whatever.

In the case of Florida provision was made for the education of Negroes at public expense, however, by an act of January, 1866, they were required to attend schools established especially for them. Thus, they were denied whatever advantages might have accrued to them through association with the children of a more advanced race, advantages of which the more enlightened Negroes were even then fully aware.

Texas, like Georgia, offered no public educational opportunities to the Negroes. By a provision of the Constitution of Texas of 1866, public schools were explicitly reserved for white students. However, a later section did provide that whatever taxes collected for education from "Africans or persons of African descent" should be utilized to maintain schools for them. The almost universal poverty of the newly-freed slaves made provisions for their taxation pointless at that

---

8 Ibid., p. 125.
9 Walter Lynwood Fleming, Documentary History of Reconstruction, (Cleveland, 1907), I, 278.
time; the intent was obviously to bar the Negroes completely from Texas public schools. Legislation which promptly followed the ratification of the 1866 constitution rendered that intention even more obvious. By an act of November, 1866, Negro children were explicitly excluded from state supported schools.11 By the terms of another act of the same day, Negroes were not even to be included in school census figures.12

By such acts as these, common throughout the South during presidential reconstruction, the Negro was denied educational opportunities. It was felt that such opportunities would cause the Negro to believe he was the equal of the white. Mixed schools would have tended even more strongly to foster such beliefs in the minds of the Negroes and consequently would have constituted a direct threat to time honored doctrines of white supremacy. Caste feeling in the southern white was too thoroughly implanted to be readily or willingly refuted.

The southern white was unwilling voluntarily to reform the evils of the old regime. Slavery was dead, but many of its manifestations were allowed to remain. The freedom given the South by President Johnson was abused, albeit not in the mind of Johnson, but certainly in the minds of Thaddeus Stevens, Charles Sumner, and other leading congressional

11 Laws of Texas, V, 1113.
12 Ibid., V, 1090-1.
Radical Republicans. After a vigorous and protracted political struggle, those Radical leaders wrested control of reconstruction policy from the hands of the president.

After the task of reconstruction was taken from President Johnson's hands by the Radical Republicans, the situation in the South was subjected to sweeping changes. The passage of the Freedmen's Bureau renewal bill, the Civil Rights Bill, and the fourteenth amendment, together with the re-occupation of the South by Union troops, destroyed much of the freedom of action on the part of ex-rebels which had been allowed them under presidential reconstruction. They were no longer free to legislate the freedmen into virtual slavery or to commit with impunity crimes against Negro civil and political rights. Many of the ex-Confederates were disfranchised by the fourteenth amendment; many others refused to vote. On the other hand, the franchise was extended to the Negroes, Northern armies protected them from intimidation, and they voted en masse. The newly enfranchised Negroes, together with the southern white loyalists, were able to present a political force which exercised tremendous influence in the southern states.

When the states of the South were required, before their legislators could be seated in the federal legislature, to adopt new constitutions, the Negroes exhibited their strength in the elections of delegates to the constitutional conventions.
In all the state conventions some Negro delegates participated; in one state, South Carolina, the Negroes formed the majority of the delegates. Those Negro delegates, in addition to the scalawag and carpetbagger element, were determined to effect sweeping revisions in the state governments of the South.

In nearly all the conventions, the question of integrated schools was a strongly debated matter. The Negroes wanted mixed schools, not to punish the southern whites, but for sounder reasons. They desired evidence of their equality and the advantages of contact with the whites; they desired also to avoid the practical difficulties of separation, such as greater cost and additional teachers.\footnote{DuBois, pp. 662-3.}

All of the states of the South produced new or greatly amended constitutions during the years of congressional reconstruction. It is indicative of the liberal tendencies of the Radical Republican that all those constitutions contained clauses requiring tax-supported state school systems. It is indicative of the strength of the Radicals that none of those documents denied the Negro equal opportunities in public education. The majority of the new constitutions did not, however, explicitly require integrated educational facilities, thus making it possible for subsequent legislatures of those states to require segregation in public schools.
(The constitution of Alabama, containing provisions permissive of segregated education, was the first to be completed in this wave of constitutional reform. The section regarding education was so worded as to allow the construction of one or more schools in each township or district, thus making it a simple matter to separate Negro and white students.\textsuperscript{14} In 1868 the legislature of Alabama took advantage of the permissive nature of that provision to forbid integrated schools "unless it be by unanimous consent of the parents and guardians" of the children involved. Otherwise separate schools would be provided.\textsuperscript{15} In addition to Negro public schools, several colleges for colored people were also established to prevent Negro enrollment in white institutions.\textsuperscript{16} Robert Somers observed in 1870 that this arrangement produced unnecessary hardships in that it was needlessly expensive and that Negro teachers were difficult to find.\textsuperscript{17}

In the state of Arkansas the situation was much like that in Alabama. Separate schools were not required by the 1868 constitution, but the legislature subsequently did make such

\textsuperscript{14}\textit{Alabama Constitution of 1867}, Thorpe, I, 149.


\textsuperscript{16}Edward King, \textit{The Great South: A Record of Journeys in Louisiana, Texas, The Indian Territory, Missouri, Arkansas, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Kentucky, Tennessee, Virginia, West Virginia and Maryland}, (Hartford, 1876), p. 343.

\textsuperscript{17}Somers, pp. 169-70.
a requirement in 1873, even though it was apparently contradictory to another act then in force. Edward King wrote in 1873 that the schools of Arkansas were everywhere classified as black or white. That included not only the public schools but also institutions of higher learning throughout the state. The Negroes, however, did receive equal benefits in all other aspects of education.

The constitutional provisions for education in Texas were similar to those of Arkansas and Alabama. Action taken by the Texas legislature in carrying out that provision was slightly different. Although separate facilities were not required by law, the way was made clear for such requirements on the part of the officials of the various school districts. This end was effected by reserving to those officials the right to separate students whenever "the harmony and success of the school require it." The question of race was not mentioned in the law. The result of this statute, which apparently was not contested, was that no Texas public schools were integrated.

---


19King, p. 283.


21Laws of Texas, VI, 288, 960-1; Laws of Texas, VII, p. 542.

22King, p. 135.
The constitution of the state of North Carolina was another of those which was permissive of either separate or mixed schools. Legislation which followed authorized separate schools. A carpetbagger, S. S. Ashley of Massachusetts, was elected Superintendent of Schools in North Carolina. Superintendent Ashley was reputed to favor integrated schools, but no serious effort to establish such schools ensued following his election. Ultimately the question was decided in favor of separate facilities, and John Wesley Hood was appointed assistant superintendent in charge of Negro schools.

The section of Georgia's 1868 constitution which required the establishment of a public school system was also of a permissive nature in regard to racial separation. No legislation immediately followed, but schools established in the interim were universally segregated. Feeling on the question was so intense in Chattooga County that a Negro schoolhouse was destroyed simply because some of the whites felt it was too near a similar structure for white children.

---


26 Whitener, p. 80; DuBois, p. 656.


28 Thompson, pp. 364-5.
In the city of Atlanta the school board was desirous of establishing mixed schools, but separate schools were allowed. Needless to say, the alternative was readily accepted.\textsuperscript{29} In 1870 the question was settled by the passage of the School Act, which required separate school facilities for Negro and white children.\textsuperscript{30} When Robert Somers visited Georgia soon after the passage of that act, he noted complete separation of the races in public education. In the city of Savannah he observed that the Catholic children were also provided separate schools under the same general superintendency.\textsuperscript{31}

Another of those states which adopted constitutions permissive of either mixed or separate educational facilities was Mississippi.\textsuperscript{32} Separate schools were later provided by statute. To this the Negro population did not object, but they demanded scrupulous equality, placing a tax burden on the whites which was deeply resented.\textsuperscript{33} In one case Mississippi narrowly missed witnessing integrated education in spite of the statute requiring separation. The white teachers of a certain county refused to teach in a Negro school. They were promptly informed by the state superintendent that if

\textsuperscript{29}DuBois, p. 663.

\textsuperscript{30}Thompson, p. 336.

\textsuperscript{31}Somers, pp. 79, 99.

\textsuperscript{32}"Mississippi Constitution of 1868", Thorpe, IV, 2080-1.

they did not he would send the Negroes to the white school, "since he was determined that they should receive instruction." Apparently the threat bore fruit, and the Negro children were taught.34

It can readily be seen that, although the Negroes were barred from attending white schools in several states, they were given better opportunities for education during congressional reconstruction than at any previous time. The situation in Tennessee and Virginia was much the same. In the three remaining ex-Confederate states, South Carolina, Louisiana, and Florida, Radical majorities were able to obtain a much greater degree of equality for the freedmen. In those states the Radical element was in firm control in the constitutional conventions and exercised overwhelming authority.

"It is the paramount duty of the State to make ample provision for the education of all children residing within its boundaries, without distinction or preference." So stated the Florida Constitution of 1868.35 The immediate practical result of the provision was negligible, however, due to the fact that Florida had almost no public school facilities. A law was soon after enacted to implement the constitutional provision; by this law discrimination was strictly forbidden

34 King, p. 316. The University of Mississippi barred Negroes but received the support of the Radical government.
in all but private schools. With both constitutional and statutory law in their favor, the Negroes could quite easily have demanded and obtained integrated educational facilities, but they did not. They fully realized that a furor would result and ultimately both races would be robbed of adequate schooling. Faced with this alternative, the Negroes demonstrated no resentment to voluntary segregation. Edward King observed in 1873 that, although the children were not attending the same schools, both classes had equal facilities, and public education was prospering in Florida.

South Carolina, the state which had always been most conservative and which had led the South in the secession movement, produced one of the most liberal of the 1868 constitutions. In regard to education it provided openly and unequivocally for integrated schools by stating: "All the public schools, colleges, and universities of this State, supported in whole or in part by the public funds, shall be free and open to all the children and youths of the State without regard to race or color." Needless to say, considerable debate had preceded the inclusion of that section in the constitution. On one side it was argued that such a

36 Stephenson, pp. 115-6.
37 King, p. 601.
38 Ibid., pp. 382, 420.
provision would result in the virtual exclusion of white children from educational facilities. A Negro delegate contended that it was the only practical means of obliterating race prejudice in future generations.\textsuperscript{40} F. L. Cardozo, a noted Negro Radical, argued that the provision would not mean compulsory mixing but rather the allowance of voluntary mixing; whereas, to establish separate schools would constitute compulsion of the opposite nature.\textsuperscript{41}

Regardless of the obvious intent of the constitutional provision, no law was enacted to implement it. Governors Orr and Scott both advised against co-education of the races, and several county commissioners declared it a practical impossibility.\textsuperscript{42} State Superintendent of Education Justus K. Jillson, although he favored racially integrated education, made no attempt to establish it.\textsuperscript{43} Therefore, South Carolina followed much the same practice as was followed elsewhere in the South; separate but otherwise equal facilities were provided for black and white students.\textsuperscript{44}

\textsuperscript{40} Proceedings of the Constitutional Convention of South Carolina, held at Charleston, South Carolina, Beginning January 14th and Ending March 17th, 1868, Including the Debates and Proceedings, (Charleston, 1868), II, 889-98.

\textsuperscript{41} Ibid., 900-1.

\textsuperscript{42} Taylor, p. 340; Simkins and Woody, p. 439.

\textsuperscript{43} Simkins and Woody, p. 439.

\textsuperscript{44} King, pp. 463, 470; Somers, pp. 51-2.
The case of the University of South Carolina was radically different. There, because no other such institution was available for the Negroes, integrated education became a fact. The first Negro student who enrolled there was Henry Hayne, then Secretary of State for South Carolina. Immediately upon his matriculation all the native white students and professors resigned. The Negroes were undaunted, however, and began to enroll in large numbers.⁴⁵ During the following four years, many of the state's highest officials received degrees from that university while it was boycotted by the white citizens.⁴⁶ Here the Negro population had achieved what previously appeared to be impossible in the South; they had entered on terms of equality into an institution previously considered the private domain of whites. It was not, however, the only case of such achievement.

Louisiana made greater strides than any other state toward establishing an educational system wholly devoid of racial discrimination. The constitution of that state declared: "There shall be no separate schools or institutions of learning established exclusively for any race in Louisiana."⁴⁷ At the time of the adoption of that provision, five delegates warned that to waive color discrimination would wreck the

⁴⁵King, pp. 459, 462; Simkins and Woody, p. 441.
⁴⁶Taylor, pp. 343-4.
⁴⁷"Louisiana Constitution of 1868", Thorpe, III, 1465.
educational system. That dire prophecy did not prove to be absolutely correct, but it was nearly so. The state superintendent demanded strict adherence to the constitutional provision, with the result that few white pupils attended the public schools. Instead numerous private schools were established for the education of the whites, and even though some mixed schools did exist, they were never in the majority. Within a few years, the educational system of Louisiana had suffered almost complete collapse, racial prejudice being a major cause. The Negroes had won a moral victory but had received little practical advantage from it.

Race prejudice, long ingrained in the minds of the southern whites, denied the Negro the right to prove that inter-racial association in education was not only possible but much more practical than enforced separation. Only in a few instances were integrated schools established, and even those few were never given the opportunity to prove their practicality. Wherever such institutions were put into operation, they were boycotted and otherwise discouraged by

---

49 Somers, p. 228.
50 King, p. 97.
51 Shugg, p. 226.
the whites. Thus, the children of the native southern whites received little benefit from them, and consequently that class objected to being taxed for their support. The constant presence of demagogic white supremacists was another large factor serving to account for the failure of integrated education in the South. Above all, time and patience were needed to overcome race feelings which had been fostered by three hundred years of slavery. Without those indispensable elements the cause of public education free of racial discrimination was hopeless. A period of less than ten years was the longest time allowed in any state to overcome three centuries of inferiority. Instead of time and patience the southern whites gave constant threats and objections. The odds were insuperable; efforts at integrated education throughout the South were doomed to ultimate failure.
CHAPTER III

RACIAL BARRIERS IN PUBLIC ACCOMMODATIONS

One of the major areas of social contact between races subject to statutory regulations during reconstruction was the use of public businesses and institutions. In those categories were included such things as public conveyances, theatres, hotels, restaurants, and charitable institutions. During the years of Negro slavery in the South, those facilities were generally considered to be the private domain of the whites. However, many rather liberal allowances were made concerning the use of them by the Negroes in the ante-bellum period. It was usually felt that so long as the Negro was definitely a slave, it was not necessary to bar him from all association with his superiors. In fact, it would have been a practical impossibility, due to the fact that body-servants almost always accompanied their masters and mistresses wherever they went.

(When the Negro was no longer a slave, restrictions on his use of public accommodations became more stringent, and laws and practices discriminatory to the freedmen were adopted throughout the South. Whereas the slave had been subject to little resentment, the freed Negro was constantly under suspicion of aspiring to equality, and various means were used
to remind him of his position. The most common method was exclusion of the Negro from the association of the whites, except when such association was of a nature which obviously branded the Negro as a social inferior. It was not necessary for the exclusion to be uniform or universal; it simply had to be common enough and repressive enough so that the Negro could never forget that he was not the equal of the white.

During presidential reconstruction Negroes were excluded from virtually every type of social contact with whites. Public facilities were almost universally segregated. One state even went so far as to establish separate courts of law for the Negro. This was, of course, highly impractical and an absolute failure, but it is indicative of the determination of the southern whites to retain the Negro in an inferior position. ¹ In some cities Negro districts were set apart, and a Negro could not live elsewhere. Other cities barred Negro residents altogether. More typical, however, were instances of enforced separation of the races in such places as theatres, restaurants, hotels, and on public conveyances.

Among the most repressive of the state laws providing for segregation in public transportation was a Florida law of 1865. The Florida statute provided that any person of color who entered a car "set apart for the exclusive accommodation of white people" would be sentenced to stand in the pillory,

¹Stephenson, p. 272.
receive up to thirty-nine stripes, or both. Although the same law and penalties applied to the whites, the intention was obviously to provide a measure protective of the whites and in compliance with the doctrine of white superiority. The fact that the culprit was to be punished with stripes, the universally accepted method of punishing a delinquent slave, demonstrated that the statute was intended primarily for the Negro.

The state of Mississippi enacted a law similar in intent to that of Florida. By that statute, however, the punishment fell not to the Negro but to the officer or employee who allowed the infraction. Another difference was the fact that the Mississippi law mentioned only railroads and not other means of conveyance. Perhaps the reason for that difference was that it would be highly impractical to bar Negroes from certain horse-cars or steam boats, whereas a railroad train could simply provide a separate car. The punishment provided by the law was a fine of from fifty to five hundred dollars and imprisonment until the fine was paid. As proof that the purpose of the law was to prevent any assumption of equality by the Negroes, the law further provided that Negroes or mulattoes serving as nurses and in the company of their mistresses were exempted. It was an obvious attempt

2Ibid., pp. 115, 208-9.

3Ibid., pp. 231-2; Fleming, I, 281.
on the part of the whites to re-establish the social relationships of the institution of slavery.

The fact that the "Jim Crow" law of Mississippi mentioned only railroad cars and no other types of transportation should not imply that the practice of segregation did not extend into other areas. J. T. Trowbridge recounted an experience aboard a river boat which demonstrated that tradition supplemented the law in cases where the law was silent. While stopping at a Mississippi river port, the boat on which Trowbridge was riding was boarded by a nice-looking, well-dressed Negro couple who applied for a state-room. The captain answered them with an epithet and ordered them off his boat. Afterward one of the passengers was heard to remark, "How would you feel to know that your wife was sleeping in the next room to a nigger and his wife?" Such a veiled hint of miscegenation was always a powerful argument even when the suspicion was obviously inapplicable.

Texas followed the lead of other southern states and enacted a law demanding racial separation on the railways of the state. The Texas law was slightly different, however, in that a specific mode of separation was prescribed. Rather than simply permitting the companies to bar Negroes from first-class accommodations or to reserve certain cars for white passengers, the statute required the railroad companies

---

to provide on each train a car especially for the accommodation of freedmen. Thus, freedom of choice was denied to all concerned.  

In the use of the public charitable institutions of the southern states, the practice was equally discriminatory. Prior to the abolition of slavery there had been no need for such accommodations for Negroes, due to the fact that slaves seldom became wards of the state; they were rather the burdens of their masters when for any reason they became unable to produce. Likewise, free Negroes would have become the wards of their white sponsors or otherwise got along as best they might. After emancipation it was no longer the duty of the masters to provide for disabled Negroes, unless so bound by labor contracts, and they fell to the care of the states. The Texas legislature, in 1866, appropriated funds for a Negro insane asylum where one class of those unfortunates could receive care and yet be kept apart from white patients.  

Tennessee, under Governor W. G. Brownlow, enacted a law designed to keep Negroes separated from whites in institutions for the care of the blind, deaf and dumb, lunatics, and paupers. In the city of Charleston, South Carolina, where Negroes had previously been treated in the charity hospital

---

5 *Laws of Texas*, V, 1015.
7 Stephenson, p. 148.
whenever they could not afford private care, a new hospital was erected in 1865 solely for the patronage of Negro clients. Instances of such separation were common throughout the South.

Practice in regard to business places of a public nature was much the same as during the days of slavery. No discrimination was made except in those places which had some degree of significance insofar as a determination of social status was concerned. Hence, while Negroes were freely allowed in markets and grocery stores, they were nowhere admitted into public inns and hotels. As was common prior to the emancipation, Negroes were almost universally allowed to attend the outdoor entertainments, but were segregated in indoor theatres. The practice continued unabated until explicitly forbidden by the Radical governments. In Virginia, for example, Negro delegates to the constitutional convention of 1867-1868 were barred from attending a Richmond theatre because they refused to accept inferior seats in the Negro gallery.

As long as political power was in the hands of the white conservatives of the South, they insisted on social ostracism

---

8Fleming, I, 311.
10Richmond Daily Dispatch, December 1, 1866; Taylor, "The Negro in the Reconstruction of Virginia", p. 296.
of the blacks wherever possible. In many cases the inequitable practices were either required by or given the sanction of the laws. It was not necessary to have such sanction, however, as the Negro was powerless to demand his rights. Before the Negro was to be in a position to demand fair and undiscriminatory treatment in the use of public facilities, it was necessary for him to obtain political power. With the coming of the congressional reconstruction, he gained such power, and, with the help of the white Radicals, he achieved at least partial reform.

Non-discriminatory service on the public conveyances of Virginia became a requirement under congressional reconstruction in that state. Negroes were to be allowed to ride wherever they desired "subject to the common rules". In practice there was no strict adherence to this rule. Negro passengers were usually transported in the smoking car. There no distinction was made as to sex or race as in first class cars, and the Negro women were often subjected to the jibes and insults of the low-class male passengers of both races.\textsuperscript{12} Such devious means of preserving segregation were not always practiced with impunity, however; numerous court cases involving charges of racial discrimination on public conveyances were decided in favor of Negro plaintiffs in Virginia.\textsuperscript{13}

\textsuperscript{12}Ibid., p. 294.

\textsuperscript{13}Ibid., p. 295.
Proprietors of such places as hotels and inns in Virginia developed several means of excluding the Negroes and thereby circumventing the objectives of the civil rights laws. In some cases they closed their businesses and then reopened as private boarding houses. In other instances exorbitant prices were charged Negro customers whereas goods and services were sold to "regular customers" at considerable discounts.\textsuperscript{14} By such methods as these Negro patronage of white establishments was minimized, if not wholly prevented.

The Mississippi Constitution of 1868 contained a provision designed to help eradicate discrimination in public accommodations. Although that provision applied only to transportation facilities, subsequent legislation extended to other areas as well.\textsuperscript{15} A law forbidding any racial discrimination in theatres was passed in 1873. That law was actively enforced and, when contested, was held to be constitutional by Mississippi state courts.\textsuperscript{16}

The only major act of the Georgia legislature for the purpose of eliminating discrimination in public places was a railroad law of 1870. By the provisions of that law, all railway companies were required to furnish equal accommodations without any distinction based on race or color.\textsuperscript{17} However,

\textsuperscript{14}Ibid., p. 296.
\textsuperscript{15}"Mississippi Constitution of 1868", Thorpe, IV, 2070.
\textsuperscript{16}Donnell v. State, 12 American Reports, 375(1874).
\textsuperscript{17}Stephenson, p. 209.
the companies found a simple method of evading the objectives of the law. A smoking car was provided for second-class passengers, smokers, and Negroes. Thus, although some contact between black and white travellers occurred, only the lower class whites were affected.\textsuperscript{18}

In South Carolina, where Radical control was more strongly entrenched, various laws were adopted with the intention of preventing enforced segregation in places of public resort. Among those was a law of March, 1870, which was specifically designed to prevent discrimination in public conveyances and in theatres. Violation of the section regarding conveyances was punishable by a fine of one thousand dollars and imprisonment at hard labor for five years. An alternative penalty was six years imprisonment without payment of fine. For violation of the section concerning theatres, the prescribed punishment was a fine of one thousand dollars and three years imprisonment at hard labor. The section forbidding discrimination in theatres likewise forbade discrimination in any "other place of amusement or recreation", which category may have been meant to include such places as hotels and restaurants.\textsuperscript{19} Regardless of the stringent penalties assessed, these provisions apparently made little difference in actual practice. In the cities Negroes were admitted into theatres,

\textsuperscript{18}Somers, p. 82.

\textsuperscript{19}Fleming, II, 386-7.
but their immediate presence was avoided whenever possible by white patrons. In the smaller towns they were not always admitted to theatres but were everywhere allowed admittance to outdoor entertainments, such as circuses and magic lantern shows. In the larger towns, especially the state capital, Negroes maintained their own hotels and boarding houses rather than suffer prejudicial treatment at the establishments of the whites.

Charitable institutions of South Carolina were not required by law to render service on a non-segregated basis. Somers noted that in the case of a Charleston public hospital, Negroes and whites were kept in separate wards, though treated in the same establishments and cared for by the same attendants. Practice was similar in state eleemosynary institutions until 1873. In that year Justus K. Jillson, who as superintendent of education also was in charge of a deaf, dumb, and blind asylum, ordered that institution to integrate. His order stipulated that Negro and white inmates be required to sleep, eat, and be taught together. The reaction was immediate; the entire staff resigned and the school was closed.

---

21Ibid., p. 250.
22Somers, p. 54.
23Fleming, II, 190-1.
At about the same time, however, an integrated insane asylum was opened and operated successfully. 24

In 1871 the state of Texas, like other southern states, reformed its laws governing public carriers, repealing the railroad statute of 1866 and making discrimination unlawful. The penalties prescribed, though much lighter than those provided by the South Carolina statute, were heavy enough to discourage violation. 25 Penal and mental institutions in Texas, at least in some cases, also discontinued practices of racial separation. 26

Both Arkansas and Florida in 1873 passed laws requiring that both races be afforded equal accommodations in all business places of public resort, public transportation, and in benevolent institutions which were supported in whole or in part by taxation. 27 Charles Nordhoff recorded that the law was well enforced in Arkansas, with only one reported violation. In that case the proprietor was fined twenty-five dollars. Some saloons provided separate bars, but others made not even that distinction. Contemporary observers indicated a reluctance on the part of the Negro to exercise

---

24 DuBois, p. 413.

25 King, p. 446; Laws of Texas, VII, 18.

26 King, pp. 119, 128.

such privileges of equality to the point of antagonizing whites. Edward King, in speaking of the South in general, seemed to feel that such action on the part of the Negro was typical. He noted that, even in those states where the position of the Negro was most powerful, they usually desired to "avoid a collision with white prejudices as much as possible".

The state in which the Negro made the greatest strides toward achieving the full and equal enjoyment of all public accommodations was Louisiana. The 1868 constitution of that state contained the following provision:

All persons shall enjoy equal rights and privileges upon any conveyance of a public character; and all places of business, or of public resort, or for which a license is required by either state, parish, or municipal authority, shall be deemed places of a public character, and shall be opened to the accommodation and patronage of all persons without distinction or discrimination on account of race or color.

In 1869, a state law to that effect was enacted which provided as penalty for violation the forfeiture of license and a damage suit by the person who had been subjected to discriminatory treatment. In 1873, the section regarding public vehicles was further refined to insure the Negro equal

---

28 Nordhoff, pp. 35-6.
29 King, pp. 782-3.
30 "Louisiana Constitution of 1868", Thorpe, III, 1450.
31 Stephenson, p. 116.
accommodations on out-of-state conveyances operating in Louisiana; however, that statute was later voided as it was deemed to interfere with interstate commerce.\textsuperscript{32} According to the reports of observers little resentment was demonstrated, and the laws were usually enforced.\textsuperscript{33} As late as 1876, cases involving the exercise of equal privileges in public accommodations were decided in Louisiana courts in favor of Negro plaintiffs.\textsuperscript{34}

The gains made during reconstruction toward breaking down racial barriers in places of public resort were less marked than achievements in the field of education. This was true chiefly because there was much more to be gained in regard to education. The position of the Negro relative to the use of public conveyances and other facilities actually degenerated immediately following the Civil War. Constitutional and statutory provisions of the Radical state governments did much to alleviate the situation, but it was impossible to eradicate all traces of discrimination even in Radical strongholds. In hotels and eating places the barriers were never seriously threatened. Only in a few states were the restrictions removed on public conveyances and in entertainments. Very few charitable institutions were able to operate successfully on an integrated basis.


\textsuperscript{33}Somers, p. 216; King, pp. 64, 72.

\textsuperscript{34}\textit{Joseph v. Bidwell}, 26 American Reports, 102 (1879).
Racial feelings apparently deteriorated rather than improved during the years of reconstruction in the South. The fears and prejudices of the more ignorant southern whites were carefully nurtured by elements of the old southern oligarchy who aspired to regain control of their respective states from the hands of the Republicans. As was true in the case of inter-racial educational facilities, businesses and conveyances which rendered services on a non-discriminatory basis were boycotted and condemned by the southern whites. The charge that Negroes were hired to demand equal facilities was common. Equally common was the belief that, if Negroes could demand social equality in those areas, miscegenation would be the next step in the leveling process.\(^{35}\) Miscegenation was the dreaded possibility which made any amount of discrimination and inequity seem pardonable.

\(^{35}\) Shugr, p. 223.
CHAPTER IV

BARRIERS AGAINST MISCEGENATION

Undoubtedly the laws and traditions prohibiting inter-racial marriage and cohabitation were more strictly enforced during the period of slavery than were any other laws governing inter-racial relations. The enforcement was flagrantly one-sided, however. Whereas sexual relations between Negro men and white women were strictly forbidden, few aspects of slavery were more common than concubinage of slave women by their white masters. Such was the natural result of the institution; so long as it was possible for a man to own a woman as completely as he might own a horse or dog, nothing more could be expected. As a result of the widespread practice of Negro concubinage, the white women of the ante-bellum South were largely spared the illicit advances of the southern gentlemen and easily retained their maidenly virtues. There grew up in the South, consequently, a fetish of female glorification not unlike that practiced by the medieval troubadours. The southern white woman became virtually unapproachable even for white men and was absolutely so for black men.

It can easily be understood that the members of a society indoctrinated as was the South would fear the sudden emancipation of two million supposedly barbaric Negro males.
in their midst. Southern whites felt their dearest traditions were gravely and immediately threatened and acted in accord with that belief. Stringent regulations forbidding interracial sexual relations were enacted throughout the South.

Georgia and Alabama included in their new constitutions, adopted during presidential reconstruction, sections forbidding racial intermarriage. The Georgia constitution directly prohibited the citizens of the state from being parties to such marriages.\(^1\) The Alabama constitution provided that the general assembly should outlaw intermarriage and establish criminal punishments for violators.\(^2\) The legislature carried out that provision during its 1866 session. The statute which was enacted stated:

> If any white person and any Negro, or the descendant of any negro, to the third generation inclusive, though one ancestor of each generation be a white person, intermarry, or live in adultery or fornication with each other, each of them must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county for not less than two, nor more than seven years. . . .

The same law further provided that the official issuing the license and the person performing the wedding ceremony should be punished by fine and imprisonment.\(^3\) Due to the fact that the Negro had not yet obtained any civil or political rights, these laws did not serve to eradicate miscegenation as it had

\(^1\)"Georgia Constitution of 1865", Thorpe, II, 822.
\(^3\)Fleming, I, 274.
been practiced prior to emancipation, but simply to perpetuate the established practices. Most of the other southern states enacted laws with similar intent.

The Mississippi state legislature adopted the most stringent law designed to prohibit intermarriage. By the terms of that statute, any Negro who intermarried with a white person, or any white person who intermarried with a Negro was, upon conviction, to be sentenced to life imprisonment in the state penitentiary. In order to discourage inter-racial sexual relations other than marriage, a section was included in the vagrancy laws of that state which forbade white men to live in adultery with Negro women. In such cases the white man was to be fined two hundred dollars and imprisoned for six months, whereas the Negro woman was to be fined fifty dollars and jailed for ten days. This is perhaps the only instance of legislation by which a white man was explicitly forbidden to have illicit sexual relations with a Negro woman. Whether or not it had any effect is a matter of conjecture.

In 1865 South Carolina passed a law which prohibited the intermarriage of Negroes and whites. That law was supplemented with other "black code" statutes, among them a statute prescribing the death penalty for Negroes convicted of rape

4 Ibid., I, 287.
5 Ibid., I, 284.
6 Ibid., I, 294.
of a white woman or "impersonating her husband for carnal purposes." All the "black laws" of South Carolina were later repealed with the exception of those laws designed to prevent miscegenation. In the area of sexual relations, color remained an impassable barrier.

Laws and practices of other southern states showed very little variety. Texas and Arkansas, during the final days of presidential reconstruction, extended certain legal rights to the Negro and repealed the "black codes" which had been adopted immediately following emancipation. In both of those states, however, laws against miscegenation remained intact. Tennessee continued to enforce its miscegenation statute of 1822. In North Carolina the situation was similar to that in Texas and Arkansas; all "black laws" were repealed in 1866 except those dealing with inter-racial sexual relations. In addition, the North Carolina legislature provided a mandatory death penalty in cases of rape by a Negro of a white woman.

The universality of anti-miscegenation laws in the South did not prevent the occurrence of numerous instances of

---

7 Simkins and Woody, p. 49.
8 Ibid., p. 59; Stephenson, p. 79.
9 Laws of Texas, V, 1049; Fleming, I, 275.
10 Farnam, p. 293; Stephenson, p. 105.
12 Ibid., p. 154; Fleming, I, 293.
inter-racial unions. Cases of miscegenation, usually involving white men and Negro women, were frequently reported in the newspapers of southern states.\textsuperscript{13} A more spectacular breach of statute occurred in Tennessee. In that case a Negro soldier and a native white woman were married with the protection of an escort of armed soldiers over the objections of the community and the presiding minister.\textsuperscript{14} It was not often that such marriages were contracted with impunity. In instances involving rape or attempted rape of a white woman by a Negro, the outcome was often swift and violent retribution by the whites. When a white man dared take a Negro bride, he was invariably ostracized by the southern community and became a Negro in all but color. The South was adamant in dealing with violators of its most rigid tradition.

The advent of congressional reconstruction brought some changes in regard to intermarriage legislation. On this question the scalawags usually allied with the conservatives in attempting to include definite prohibitory provisions in the reconstruction constitutions. They were not successful in so doing, and the Radical constitutions contained no such prohibitions. It was impossible, however, to alter the traditional southern view of the problem. General disapproval remained, and in most states earlier provisions on

\textsuperscript{13} Richmond Daily Dispatch, July 23, October 13, 1866.

\textsuperscript{14} Fisk University, p. 123.
the subject were regarded as still in force even though the new constitutions provided for complete equality before the law.

The question of miscegenation was debated briefly in the 1868 constitutional convention of Mississippi. A resolution was offered in the convention to include in the bill of rights a provision forbidding the intermarriage of white and colored persons. In the subsequent debate an amendment was added to the original resolution extending it to include all forms of miscegenation and providing for disfranchisement of violators and pay for informers. Ultimately the resolution was rejected and no mention of miscegenation was made in the final constitution.

The ante-bellum laws and traditions on the subject continued to be enforced to some extent until 1870 when the intermarriage law in Mississippi was repealed. Closely following the repeal of that law, Albert Talmor Morgan, a well-known Mississippi carpetbagger, was married to an octroo school-teacher in Yazoo. Morgan was not the only prominent public figure of Mississippi who thus scorned the

16 Ibid., pp. 211-2.
17 "Mississippi Constitution of 1868", Thorpe, IV,
18 Vernon Lane Wharton, The Negro in Mississippi, 1865-1890, (Chapel Hill, 1947), pp. 150, 228.
19 Ibid., p. 228; Morgan, pp. 345-52.
southern tradition. In 1874 Haskins Smith, "a saddle-colored member of the legislature," married the white daughter of a former employer in Vicksburg. There were, of course, some objections on the part of the Mississippi whites, but such objections did not extend beyond harsh talk. 20

The issue of miscegenation was also raised in the Alabama convention. In that assembly a resolution was proposed which would have required the legislature to adopt a statute prohibiting intermarriage or illicit cohabitation between whites and Negroes to the fourth generation, the punishment for violation being life imprisonment. The intent of the proposal was obviously to make political capital, and after very brief debate the resolution was tabled and never reintroduced. 21 No such provision was included in the final draft of the constitution, and, as a result, several delegates refused to sign the completed document. 22 As was the general practice elsewhere in the South, however, existing laws on the subject continued to be observed.

In the Georgia convention a native white delegate made a motion for the adoption of an ordinance which would have

---

20 Fleming, II, 291; Wharton, pp. 228-9.


outlawed the practice of inter-racial marriage. The suggested punishment for the act was ten to twenty years imprisonment or exile to Africa at the expense of the violator.\textsuperscript{23} Immediately upon presentation of the ordinance, it was ruled as out-of-order due to its legislative nature.\textsuperscript{24} The question did not arise again, and no section concerning miscegenation was contained in the finished constitution.

Regardless of the refusal of the constitutional convention to adopt a provision prohibiting miscegenation, the people of Georgia continued to enforce the existing laws on the subject. Those laws, one of which dated back to the colonial period, applied only to intermarriage and adultery.\textsuperscript{25} They were, however, amply supplemented in practice to include other forms of miscegenation. In northwestern Georgia, for example, it was common practice to administer public whippings to Negro men for "associating with white women."\textsuperscript{26} In at least two cases during congressional reconstruction, Georgia Negroes were lynched for allegedly raping white women.\textsuperscript{27}

\textsuperscript{23} Journal of the Proceedings of the Constitutional Convention of the People of Georgia, Held in the City of Atlanta in the Months of December, 1867, and January, February, and March, 1868, and Ordinances and Resolutions Adopted, (Augusta, 1868), p. 143.

\textsuperscript{24} Ibid., p. 143.

\textsuperscript{25} Farnam, pp. 339, 349.

\textsuperscript{26} DuBois, p. 677.

\textsuperscript{27} Thompson, p. 364.
In 1869 an important case involving an inter-racial marriage was tried before the Georgia supreme court. The defendant, Scott, pleaded that his conviction under the existing law should be nullified due to a section in the bill of rights of the 1868 constitution which declared: "The social status of the citizen shall never be the subject of legislation." The decision of the court, accompanied by a lengthy harangue on the manifold evils of such "unnatural connections," was that the section in question did not repeal previous social legislation but simply disallowed any future enactments; therefore, the conviction was sustained, and Georgia's miscegenation laws were vindicated. Although this decision was an obvious corruption of the intent of the constitutional provision, it was never contested or reversed.

The most thorough public discussion on the subject of inter-racial sexual relations occurred in the Arkansas convention. The issue was introduced by delegate John M. Bradley, in a resolution to forbid intermarriage by constitutional provision. That resolution was immediately opposed by W. H. Grey, a Negro delegate. Grey attempted to explain the numerous

29 Thompson, p. 358; Fleming, II, 288-9; Stephenson, p. 80.
difficulties presented by the enactment of such a rule. He contended that, carried to its logical conclusion, it would necessitate the employment of trained physiologists to determine the heredity of a citizen before he could be allowed to marry. Grey further contended that such a provision as Bradley envisioned would not serve to eradicate the practice of miscegenation, but would simply deny those who desired to intermarry the right to do so "honorably and above-board." 31 Another Radical delegate added the opinion that "if, under the law, a man is free, he has the right to marry as he pleases." He further observed: "Some gentlemen talk as if we were going to force men to marry negroes." 32 The same delegate later added the contention that the fear of miscegenation was simply a "hobgoblin" invented by political demagogues to garner votes. 33 When, after many days of debate, the original resolution was finally voted upon, it was soundly defeated by the Republican majority. 34

Due partially to a long history of more or less socially accepted miscegenation in Louisiana, the question of intermarriage did not arise in the constitutional convention of that state. 35 There was no chance that a prohibitory provision

---

31 Ibid., p. 366.
32 Ibid., p. 376.
33 Ibid., p. 493.
34 Ibid., p. 498.
35 Shugg, p. 223.
could have been adopted, and a debate on the subject would simply have served as a source of embarrassment to the native whites. Citizens of Louisiana continued to disregard the color line in matters of casual sexual relations, but intermarriage was not practiced widely. A few cases of racial intermarriage did occur but attracted little public criticism. Somers noted that one white member of the Louisiana Legislature married a Negro woman and was not generally condemned for his action, as he might have been in other southern states.  

In none of the South Atlantic states, with the exception of Georgia, did the constitutional conventions debate on the issues of intermarriage and miscegenation. Of those states Virginia made perhaps the greatest effort to halt the practice of inter-racial sexual contacts. The newspapers of Virginia, during congressional reconstruction, reported numerous cases in which persons were convicted by state or

36 Somers, p. 226.

municipal courts for being parties to inter-racial marriages and other forms of miscegenation. Penalties were usually rather lenient but constant arrests did serve to stigmatize such unions, and probably prevented their more frequent occurrence. In South Carolina the situation was much the same as in Virginia, except for the fact that retribution against participants in inter-racial sexual relations was usually of an unofficial nature. Indignant citizens sometimes held public demonstrations of condemnation when an inter-racial union was discovered. If the relationship were a legalized marriage, the official who had performed the ceremony was often publicly censured. Such was the reaction when Bet Hancock, a white girl, married Jim Gour, a Negro, in Timmonsville, South Carolina, in 1869. Unions of white women and Negro men were not common in South Carolina, but every county produced at least one case of intermarriage between white men and Negro women. In such cases, the men involved were condemned by white society to "bitter hatred and irrevocable social ostracism".

Public reaction to miscegenation was uniformly repressive during reconstruction whenever a Negro man was linked

40 Ibid., pp. 250-1.
with a white woman. It was of the utmost importance in the minds of southern whites to instill in the mind of the Negro the idea that he could under no circumstance press his assumption of equality to the point of having sexual contact with any white woman. The question was obviously not one of maintaining racial purity, for the whites had long before destroyed any such hopes by their own illicit behavior. It was chiefly a question of pride on the part of southern white men. They had long assumed the innate inferiority of the Negro and had belittled and subjected him for three centuries. They would not now allow themselves to be cuckolded by members of the slave caste, if they could by any means prevent it.

If, as the opponents of intermarriage claimed, miscegenation was detrimental to both races and especially compromised the perpetuation of white superiority, why were casual sexual contacts between white men and Negro women less objectionable to the southern whites than intermarriage? The question was perhaps best answered by a member of the old southern ruling class in attempting to explain his views to A. T. Morgan. That gentleman objected to social equality for the Negroes on the basis that "nigro wenches" would believe they were "just as good as the finest lady in the land." The result of such delusions, the planter believed, would be to force the young men of the South "back upon the white ladies".
Then white southern womanhood would lose the vaunted purity which had so long been maintained at the expense of the Negro.\textsuperscript{41}

The motive behind the insistence of the southern whites on stringent prohibitions was obviously not to maintain complete and absolute separation. The idea of racial purity was simply another racist myth utilized to maintain the superiority of the whites. The ante-bellum whites had themselves destroyed all hopes of racial purity, if it was indeed a thing for which to hope. The effect of anti-miscegenation legislation was simply to perpetuate the old practices of the southern whites. A white man, if he so desired, was free to enjoy casual sexual contact with Negro women; a Negro man was prevented from similar usage of white women. Thus, the fetish of white female purity was sustained. The question was never, "Would you want your son to sleep with a nigger?" but always the same as before: "How would you like to have your daughter marry a nigger?" The South had not changed in this respect; the same double standard remained basic to southern thought. Freedom of choice, denied to the Negro, was reserved to the white except on one point. In no case was inter-racial marriage socially condoned. The institution of marriage presupposed the essential equality of its participants; therefore, it must never be allowed. This rule

\textsuperscript{41} Morgan, p. 212
was fundamental to the whole concept of white supremacy. Without it the battle was lost for the southern racists. Legal and traditional barriers forbidding inter-racial marriages constituted the inner battlements between black and white; to the South it was imperative that those final walls remain, perpetuating a caste society in a democratic nation.
CHAPTER V

REDEMNPTION AND REACTION

Throughout the history of the world some form of caste has always existed. Whenever differences rather than similarities between racial, religious, or ethnic groups were emphasized and natural prejudices were exploited for the sake of political power, minority elements became the victims of caste discrimination. Such has been the case in the history of the United States. In the earliest days of slavery in the United States, Negro and white bond servants received much the same treatment. Oftentimes the manumission of a Negro slave was automatic upon his acceptance of the Christian religion. As the system developed, however, white bondage gradually died out. The colonial plantation aristocrats, faced with labor shortages due to free western lands and the subsequent decline of white laborers, introduced the concept that the Negro was intended to remain in perpetual slavery. Those opinions were allegedly supported by Holy Writ and the findings of biologists and physiologists. The Negro began to be considered innately inferior and naturally servile. The concept of innate inferiority aided greatly in producing the American slave system. Negroes ceased being manumitted upon attaining a certain age or becoming Christianized. After
a period of years during which such practice became widely applied and accepted, laws were enacted to support and maintain the institution of Negro slavery. Servitude, perhaps for the first time in history, became synonymous with color.

As the concept of the innate equality of all men began to sweep the country, in the late colonial period, the institution of slavery was shaken. Many leading revolutionaries freed their slaves and advised others to do likewise. All expressed a sympathy for the status of the Negro, but most slave-holders pleaded for time, asserting that the Negro was not yet prepared for freedom or that wholesale emancipation was not economically feasible and must be postponed. A section condemning the practice of slavery was deleted from the original draft of the Declaration of Independence, but few leading citizens of the time would have defended the institution as being morally just. It was considered rather a necessary evil.

It was not until the 1820's that the statesmen of the South began to defend the institution of slavery for other than economic reasons. In that period of budding democracy it was necessary to secure the emotional support of the people. Such support could not be maintained by economic appeals. Thus, the southern oligarchy, fearing the encroachments of northern liberalism, began to defend the institution of Negro slavery as morally just, ordained by God, in accord with
natural science, and vindicated by history. Such pleas became the very core of southern indoctrination; the people believed and accepted the myth of the naturally inferior and servile status of the Negro. Here the basis was laid for the developments of later years; racial prejudice was born in large part out of the avarice of southern oligarchs.

By the time of the Civil War the multitudes of the South had become thoroughly convinced that their social and economic system was the right one. Any attempt to change it was heresy and subversion, a damnable plot of the Devil himself. A crusading pro-slavery spirit motivated many to whom the system was a tremendous economic burden. Ignorant yeomen and poor whites joined the planters in preserving the system which kept them poor. If "Black Lincoln" won the war the "nigger bucks" would rape, loot, and kill the whites in orgiastic revenge for their enslavement—so believed many of the southerners.

It was this attitude, fostered by generations of oligarchic domination, which made the program of the Radical governments extremely problematic if not impossible of attainment. Traditional barriers and prejudices faced them whenever they attempted to improve the lot of the Negroes. Laws could be passed and sometimes enforced to raise the Negro to political and social equality. Basic attitudes, however, could not be so easily recast. If any aspect of reform want counter
to the prejudices of the southern masses, no plea to justice, equity, or economy could sway them.

As a result, freedom made little practical difference in the social status of the Negro. Laws could be enacted to make him a free man and a citizen, but they could not make him white. Even under the Radical governments little was gained which had more than a theoretical value. Dignity and social equality were denied. Attempts to obtain social equality simply produced increased resentment. That resentment against the Negro, fostered by insistence of equality on one side, and prejudice and tradition on the other, grew in the minds of the southern whites. Again it was sponsored by the old aristocracy, not out of hatred for the Negro, but from a desire to gain control once more. It was a means to the end of restoring economy to the governments of the South and wealth and prestige to themselves. The aristocrats hated the Radical governments for their extravagance, extravagance for which they, as tax payers, bore the brunt; consequently, they induced the masses to hate Radicalism for its program of racial equality.

The question of inter-racial social contact was one of the hated aspects of the Radical program of reform. Although laws were changed, opinions were not. The southern Radical governments did not have the advantage of time to destroy the sentiments which had been gradually built up through centuries
of slavery. When their control ended, the old generation was still dominant. The South had not become accustomed to inter-racial associations based on social equality. Under those circumstances, a retrogression to the old order of racial associations was inevitable.

The Radical governments of the South gradually succumbed, due to a variety of reasons. Chief among those reasons were the changing nature of the national Republican party and the decreasing voting strength of the Negro. Due to intimidation, bribery, and actual physical violence from the southern whites, a large percentage of Negro voters either changed their allegiance from the Republican to the Democratic party or did not vote at all. By 1871, Georgia, North Carolina, Tennessee, and Virginia had returned to the control of southern conservatives. In 1874 and 1875 the conservatives gained political control of Alabama, Arkansas, Mississippi, and Texas. By mid-1877 Florida, South Carolina, and Louisiana had joined their sister states in once more constituting a solidly Democratic South. The "redeemers", avowedly opposed to all phases of the Radical program, were now in power.

An era of political and social reaction was begun in an effort to remove all vestiges of Radicalism from the South. In some states public education was discontinued or curtailed, only to be reinstated at popular insistence. Legislative investigations were launched in frenzied efforts to so discredit the Republican officials that they might never be able
to regain control. The Negro, who had sought with the help of white Republicans to improve his lot politically and socially, soon lost the gains he had made. Reaction set in through the South.

Public schools, which had been generally segregated during reconstruction, became absolutely so following the return to power of the conservatives. The demand for separate facilities came, in part, from the Negroes as well as the whites; the colored citizens preferred separation to association on terms of inferiority.¹ In every state of the South, laws were enacted to require the continuance of segregation in education.

New constitutions adopted by conservative regimes in some of the southern states required separation in public education. Such was the case in Tennessee, Alabama, North Carolina, Texas, and Georgia.² None of these states had previously practiced integration in education, but they had not, during reconstruction, required separation by constitutional provision. The Negroes, no longer possessing political power proportionate to their numbers, were unable to prevent such constitutional sanctions of racial discrimination in education.


In those states the segregation of the schools was absolute. [Tennessee, which then ranked third in illiteracy throughout the nation, provided that taxation for support of public education would be optional with the school districts. Because the Negroes were too poor to supply schools for themselves, they were often left without educational facilities.\(^3\) The legislature of Georgia in 1872, prior to the adoption of the conservative constitution, required separate schools for white and Negro students.\(^4\) That requirement was allegedly adopted at the insistence of the Negroes, who disliked having their children treated as inferiors.\(^5\) Texas also adopted a statute requiring segregation and designating the manner of its implementation.\(^7\) According to the terms of that law, no school which was erected in whole or in part through a voluntary subscription of funds by the Negro population could be used for the accommodation of whites without the consent of the Negroes. The same rule applied to the Negroes in regard to schools erected by the white population. Furthermore, no school which taught Negro and white students together could receive any state funds.\(^6\) North Carolina, whose school system prior to the war had been the best in the South, followed a course similar to that of her sister states.\(^7\)

\(^3\) King, pp. 547, 731.  
\(^4\) Stephenson, p. 171  
\(^5\) Campbell, p. 365.  
\(^6\) Laws of Texas, VIII, 1045.  
\(^7\) Hamilton, p. 618; See also Whitener.
In Virginia, although the constitution did not require separate schools, they were required by a legislative enactment. 8 Contemporary observers noted that separation was complete throughout the state. 9 Although races did enjoy more or less equal facilities for a time, ultimately, even that degree of solace was denied the Negro, and accommodations for colored students steadily deteriorated as an ever larger percentage of aid went to the support of white schools. 10

In the remaining southern states the outcome of redemption, in regard to racial relations in education, followed approximately the same pattern. Mixed schools were no longer required in Florida, Louisiana, and South Carolina. 11 In South Carolina, the state university returned once more to white domination. In 1877 the Negro students and professors were dismissed; white students and professors returned as the old order was re-established. 12 In South Carolina and Mississippi, and apparently in the other southern states, public support of Negro and white schools became increasingly inequitable under Democratic control. The southern whites,


9 Somers, p. 19; King, p. 581.

10 King, pp. 574, 638.

11 DuBois, p. 660; Simkins and Woody, p. 443.

12 Simkins and Woody, p. 441.
reasoning that the Negroes paid less taxes, demanded that a
greater percentage of available funds should go to the main-
tenance of white schools. Thus, the Negroes, having already
lost the battle for integrated education, began to suffer a
steady decline in educational opportunities of any nature.

In regard to the use of public accommodations, sepa-
rathon was not immediate but did become common practice within
a short time after the fall of the Republican governments.
Edward King observed that Negroes and whites under the Demo-
ocratic regimes of the southern states generally traveled in
separate railroad cars and were otherwise discriminated
against in the use of public facilities. Several of the
southern states re-introduced laws and practices, out of use
under Radical reconstruction, to establish once more the
social relationships which had previously regulated contact
between the races in places of public resort.

The Texas legislature in 1876 repealed the section of
its 1871 statutes which had required undiscriminatory treat-
ment in the use of railroads. In its place was enacted a
provision identical to the law of 1866 which had required
each train to include a separate car for Negro passengers.
Again exception was made in the case of nurses accompanying
their mistresses. The validity of the law was upheld in

13 Fleming, II, 204; Wharton, pp. 247-8.
14 King, pp. 554, 782-3.
15 Vernon's Texas Statutes 1948, (Kansas City, Missouri,
1948), Article 6417.
a federal district court case of 1877. The decision of the court declared that, so long as "equally fit and appropriate" facilities were provided for Negro and white passengers, the statute did not violate the Civil Rights Bill.16 "Jim Crow" was thus vindicated and legalized; the South had obtained new freedom in dealing with the question of racial associations.

An even more far-reaching decision had been rendered two years earlier in a federal case arising in Tennessee. That case, involving a breach of the Federal Civil Rights Bill, stemmed from the refusal of a hotel owner to accord equal accommodations to a Negro customer. It was decided that the federal government had no right to require any owner of a place of public resort to entertain Negroes.17 That decision was closely followed by the passage in the Tennessee legislature of a statute based upon the words of the court. The statute stated:

The rule of the common law giving a right of action to any person excluded from any hotel, or public means of transportation, or place of amusement, is hereby abrogated; and hereafter no keeper of any hotel, or public house, or carrier of passengers for hire, or conductors, drivers, or employees of such carrier or keeper, shall be bound, or under any obligation to carry, or admit, to his house, hotel, carriage, or means of transportation or place of amusement; nor shall any right exist in favor of any such person so refused

16 Stephenson, p. 214.

17 Ibid., p. 134.
admission, but the right of such keepers of hotels and public houses, carriers of passengers and keepers of places of amusement and their employees to control the access and admission or exclusion of persons to or from their public houses, means of transportation, and places of amusement, shall be as perfect and complete as that of any person over his private house, carriage, or private theatre, or place of amusement for his family. 18

There was no room for doubt; for all practical purposes the Civil Rights Bill was now a dead letter in Tennessee.

In other states discriminatory practices of various types once again came into general practice. In parts of South Carolina, where separate courts of law had once been established for them, the Negroes were made to vote at separate ballot boxes. 19 At Cedar Springs, South Carolina, the institution for deaf, dumb, and blind, which had been closed following Justus Jillson's integration order, reopened on a segregated basis. 20 In Alabama, unscrupulous Democrats made the Civil Rights Bill work for them by hiring Negroes to board at hotels and otherwise arouse the enmity of the citizenry toward all aspects of Radicalism. 21 In North Carolina, Virginia, and Georgia, Negroes and whites were separated on railroads. 22 Some places in the South had, by 1874,

18 Ibid., p. 117. 19 DuBois, p. 687.
20 Simkins and Woody, p. 440.
21 Nordhoff, p. 91.
22 King, pp. 782-3; Campbell, p. 292.
already established segregated waiting-rooms in railway depots.\textsuperscript{23} Such were the beginnings of the reaction which became steadily more repressive with continuing Democratic control.

Popular reaction was most strongly felt in regard to inter-racial sexual contacts. Whereas objections to such practice during Radical reconstruction had usually been vocal and legal, they now became violent and murderous. The principle of "racial purity" was extremely important in the minds of southern whites. The "hobgoblin" of miscegenation had been used with outstanding success by ambitious demagogues.

Some of those states which adopted new constitutions soon after conservative redemption included in those documents prohibitions of inter-racial marriage. Georgia, on the precedent of the Scott v. State decision, simply restated the provision forbidding legislation on the subject of social status.\textsuperscript{24} North Carolina amended its Radical constitution, adding a section which prohibited marriage between whites and Negroes, "or between a white person and white person of negro descent to the third generation inclusive".\textsuperscript{25} A provision of the Tennessee constitution forbade intermarriage

\textsuperscript{23} King, pp. 782-3.
\textsuperscript{24} "Georgia Constitution of 1877", Thorpe, II, 643.
\textsuperscript{25} "North Carolina Constitution of 1876", Thorpe, V, 2843.
between white and Negro citizens, as well as less permanent forms of inter-racial sexual contacts. By that provision the legislature was required to enact statutory prohibitions and to provide penalties for violation.²⁶

Not all of the southern states enacted statutes forbidding miscegenation in the early years of post-reconstruction era. In some states it was not considered necessary due to the fact that the ante-bellum laws on the subject were still in force. Mississippi, whose intermarriage laws had been repealed in 1870, re-enacted those statutes in 1880.²⁷ In South Carolina, where numerous precedents of inter-racial marriage had occurred without legal penalty during reconstruction a statute was adopted in 1879, outlawing intermarriage. In addition to declaring such marriages null and void, the South Carolina law provided penalties of fine and imprisonment. The same penalties, a fine of not less than five hundred dollars, twelve months imprisonment, or both, were to be applied to the clergyman or magistrate who performed the wedding ceremony.²⁸ Equally repressive legislation was enacted in later years by all the southern states.

If the practice of miscegenation declined in the new South, it was not entirely or even mainly due to constitutional

²⁷Murray, p. 246.
²⁸Ibid., p. 417.
and legislative prohibitions of such action. It was rather
due to the completely intolerant attitude of the southern
whites concerning that controversial subject. Retributions
against Negroes who dared to defy the most sacred of southern
myth-traditions were swift, violent, and often unbelievably
cruel. As was the general practice in ante-bellum days,
however, the double standard almost universally prevailed.
In some cases Negroes were lynched even when the question of
rape was not involved simply for "fooling around with the
'po' white trash" or "putting up" with white women of the
lowest social and moral order.\textsuperscript{29} Occasionally law officers
publicly condoned such murders committed in the name of
racial purity.\textsuperscript{30} The white public almost invariably gave
its approval.

Whatever progress had been made during reconstruction
toward establishing an equitable system of race relations was
destroyed upon the dissolution of the Radical governments.
The South returned to its traditional concepts, and a system
of social relationships similar to the ante-bellum system
was reinstated. The Negro, now a citizen, began a steady de-
cline, a regression into social and political inferiority, a
decline from which he was not soon to recover. Second-class
citizenship became a reality sanctioned by public opinion
and perpetuated by legislative power.

\textsuperscript{29} Fisk University, pp. 70-1. \textsuperscript{30} Ibid., pp. 51-2.
The Radical program of social equality for the Negro ultimately failed. True, the southern Negro did obtain educational and political advantages which were not wholly destroyed with the return to power of the conservatives, but the caste structure remained. Not only did it remain but it became more repressive than ever before. The whites no longer had an economic interest in the Negro, he was no longer protected by fear of offense to his master, he was the social subordinate to every white. If he offended tradition by seeking or demanding equitable treatment or by ignoring racial barriers, he was the legitimate prey of any member, no matter how base or depraved, of the master class. Limited freedom and citizenship were gained by the Negro, but many of the most fundamental benefits of those attainments were denied.
BIBLIOGRAPHY

Primary Sources

Public Documents


Donnell v. State, 12 American Reports, 375 (1874).

Gammel, H. P. N., editor, Laws of Texas, 1822-1897 (10 volumes), Austin, Gammel Book Company, 1898.

Joseph v. Bidwell, 26 American Reports, 102 (1879).


Journal of the Proceedings of the Constitutional Convention of the People of Georgia, Held in the City of Atlanta In the Months of December, 1867, and January, February, and March, 1868, and Ordinances and Resolutions Adopted, Augusta, E. H. Pugh, 1868.

Journal of the Proceedings in the Constitutional Convention of the State of Mississippi, Jackson, Mississippi, E. Stafford, 1871.

Journal of the Reconstruction Convention which met at Austin, Texas, June 1, A. D., 1868 (2 volumes), Austin, Tracy, Siemering & Company, 1870.

Official Journal of the Constitutional Convention of the State of Alabama, held in the City of Montgomery, commencing on Tuesday, November 5th, A. D., 1867, Montgomery, Barrett & Brown, 1869.

Proceedings of the Constitutional Convention of South Carolina, held at Charleston, South Carolina, beginning January 11th and ending March 17th, 1868, including the Debates and Proceedings (2 volumes), Charleston, Denny and Perry, 1868.


Diaries and Collected Materials


Fisk University, The Unwritten History of Slavery, Nashville, Social Science Institute, Fisk University, 1945.

Fleming, Walter Lynwood, Documentary History of Reconstruction, Political, Military, Social, Religious, Educational and Industrial, 1865 to the Present Time (2 volumes), Cleveland, Arthur Clarke, 1907.


Murray, Pauli, editor, States' Laws on Race and Color, New York, Women's Division of Christian Service, Board of Missions and Church Extension, Methodist Church, 1950.


Olmsted, Frederick Law, A Journey in the Seaboard Slave States, New York, Dix & Edwards, 1856.

Somers, Robert, The Southern States since the War, 1870-1, New York, Macmillan, 1871.


Newspapers

Galveston Tri-Weekly, January 15, 1856.

Richmond Daily Dispatch, 1860-1866.

Secondary Works

Articles


Books and Monographs


Doyle, Bertram Wilbur, Etiquette of Race Relations in the South, Chicago, Chicago University Press, 1935.


Simkins, Francis Butler, and Woody, Robert Hilliard, South Carolina during Reconstruction, Chapel Hill, University of North Carolina Press, 1932.


