

Black codes, 1866

COMMENTARY AND SIDEBAR NOTES BY L. MAREN WOOD AND
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Public Laws of North Carolina, session of 1866, p. 99; and Senate Ex. Doc. no. 26,
39 Cong., 1 Sess., p. 197. March 10, 1866

As you read...

BLACK CODES

“Black Codes” were laws and constitutional amendments passed by former Confederate states after the Civil War as a way of maintaining white supremacy — the unquestioned rule of the South by whites. With these laws, whites tried to keep a system as close to actual slavery as possible. The laws on this page are excerpted from legislation passed by North Carolina’s General Assembly in 1866, when former Confederates had returned to power, before military reconstruction forced them out.

The first section of this act defined who was “a person of color.” The second section brought forward all of the laws from the antebellum period that had limited the rights of free blacks, and imposed these laws on all “people of color” in North Carolina.

These “black codes” also limited the rights of African Americans in new ways. For example, a black person could testify in court only if the case involved African Americans; if the case involved two white people, then both had to agree to allow a black person to testify. If one black person sold property to another black person and the value of the property was more than ten dollars, the transaction had to be witnessed by a white person who could read or write.

THE FIRST CIVIL RIGHTS ACT

Congress responded to the black codes by passing the Civil Rights Act of 1866, which invalidated these laws. This act declared freed people to be citizens of the United States who could make and enforce contracts, sue and be sued, give evidence in court, and inherit, purchase, lease, sell, hold, and convey real estate and personal property. Anyone denying these rights to former slaves would be guilty of a misdemeanor and face a fine or prison. President Johnson vetoed the law, but Congress passed it over his veto.

Some people questioned Congress’ power to make such a law. Republicans responded by passing the two more amendments to the Constitution that, once ratified by the states, would become the fourteenth, and fifteenth amendments.

But the civil rights of former slaves had to be protected not only by laws but by federal power — military power. Military reconstruction was the result, but when that ended in the 1870s, white southerners quickly found ways around the Constitution, passing “Jim Crow” laws that would again limit the freedoms of African Americans.

QUESTIONS TO CONSIDER

1. How did the state recognize marriages between former slaves?
2. What were employers legally bound to provide to their apprentices? What did an apprentice receive at the end of their years of service?
3. What privileges were given to former slave masters in regards to apprentices? Why do you think this law was passed?
4. Why do you think that the lawmakers required that sales of property between blacks where the value was more than \$10 be witnessed by a literate white person? Why not have the contract written by any person who could write?
5. Why do you think that the testimony of African Americans was not allowed in court when the case was between two white people? How might this law have affected the outcome of a trial?
6. Why do you think lawmakers passed a special law to punish black men who attempted to rape a white woman, when there were already laws governing rape and attempted rape?

Sec. 1. *Be it enacted by the General Assembly of the State of North Carolina* That negroes and their issue, even where one ancestor in each succeeding generation to the fourth inclusive is white, shall be deemed persons of color.

Sec. 2. ...All persons of color who are now inhabitants of this State shall be entitled to the same privileges, and are subject to the same burthens and disabilities, as by the laws of the State were conferred on, or were attached to, free persons of color, prior to the ordinance of emancipation, except as the same may be changed by law.

Sec. 3. ...Persons of color shall be entitled to all the privileges of white persons in the mode of prosecuting, defending, continuing, removing and transferring their suits at law and in equity; and likewise to the same mode of trial by jury, and all the privileges appertaining thereto. And in all proceedings in equity by or against them, their answer shall have the same force and effect in all respects as the answer of white persons.

Sec. 4. ...In all cases of apprenticeship of persons of color, under chapter five (5) of the revised code, the master shall be bound to discharge the same duties to them as to apprentices...: *Provided always*, That in the binding out of apprentices of color, the former masters of such apprentices, when they shall be regarded as suitable persons by the court, shall be entitled to have such apprentices bound to them, in preference to other persons.

Chapter 5, section 3, of the revised code, as amended by this act, reads thus: The master or mistress shall provide for the apprentice diet, clothes, lodging, and accommodations fit and necessary; and such apprentice shall teach or cause to be taught to read and write, and the elementary rules of arithmetic; and at the expiration of every apprenticeship shall pay to each apprentice six dollars, and furnish him with a new suit of clothes, and a new Bible; and if upon complaint made to the court of pleas and quarter sessions it shall appear that any apprentice is ill-used, or not taught the trade, profession and employment to which he was bound, or that any apprentice is not taught reading, writing, and arithmetic as aforesaid, the court may remove and bind him to some other suitable person.

Sec. 5. ¹ ...In all cases where men and women, both or one of them were lately slaves and are now emancipated, now cohabit together in the relation of husband and wife, the parties shall be deemed to have been lawfully married as man and wife at the time of the commencement of such cohabitation, although they may not have been married in due

form of law. And all persons whose cohabitation is hereby ratified into a state of marriage shall go before the clerk of the court of pleas and quarter sessions of the county in which they reside, at his office, or before some justice of the peace, and acknowledge the fact of such cohabitation, and the time of its commencement, and the clerk shall enter the same in a book kept for that purpose...

Sec. 7. ...All contracts between any persons whatever, whereof one or more of them shall be a person of color, for the sale or purchase of any horse, mule, ass, jennet, neat cattle, hog, sheep or goat, whatever may be the value of such articles, and all contracts between such persons for any other article or articles of property whatever of the value of ten dollars or more; and all contracts executed or executory between such persons for the payment of money of the value of ten dollars or more, shall be void as to all persons whatever, unless the same be put in writing and signed by the vendors or debtors, and witnessed by a white person who can read and write...

Sec. 9. ...Persons of color not otherwise incompetent shall be capable of bearing evidence in all controversies at law and in equity, where the rights of persons or property of persons of color shall be put in issue, and would be concluded by the judgment or decree of court; and also in pleas of the State, where the violence, fraud, or injury alleged shall be charged to have been done by or to persons of color. In all other civil and criminal cases such evidence shall be deemed inadmissible, unless by consent of the parties of record: *Provided*, That this section shall not go into effect until jurisdiction in matters relating to freedmen shall be fully committed to the courts of this State: *Provided, further*, That no person shall be deemed incompetent to bear testimony in such cases because of being a party to the record or in interest...

Sec. 11. ...Any person of color convicted by due course of law of an assault with an attempt to commit rape upon the body of a white female, shall suffer death.

Sec. 12. ...The criminal laws of the State embracing and affecting a white person are hereby extended to persons of color, except where it is otherwise provided in this act, and whenever they shall be convicted of any act made criminal, if committed by a white person, they shall be punished in like manner, except in such cases where other and different punishment may be prescribed or allowed by this act.

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Notes

1. See “Making marriages legal” for more about this section of the law.

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