

Black codes

COMMENTARY AND SIDEBAR NOTES BY L. MAREN WOOD AND DAVID WALBERT

An Act Concerning Slaves and Free Persons of Color (Revised code, 1855).

As you read...

Following Nat Turner's rebellion, and fearing the rise of the abolition movement in the North, slaveholders throughout the South strengthened laws governing slaves and free people of color, known as "black codes." The black codes governed enslaved people as well as four categories of free people:

- "Free negroes," or free-born African Americans.
- "Former slaves," enslaved people who had been liberated.
- "Mulattoes," people of mixed (both black and white) ancestry.
- "Free persons of color," which included all the other categories but could also be extended to Native Americans.

By lumping together free and enslaved people of color into one legal category, whites divided the population along racial lines, not along the legal categories of free and unfree.

MAINTAINING WHITE CONTROL

In reading the legal code, you can clearly see the anxiety of southern whites over the possibility of slave insurrection and abolition. These codes sought to limit the ability of enslaved people to read, write, mingle together in groups, preach, assemble, own weapons, earn money, and hold property, and they also limited slave owners' ability to free their slaves.

While the black codes brought free and unfree African Americans into one legal category, they also tried to divide the African American community. For example, several laws forbade free people of color from socializing with or marrying slaves.

White lawmakers also tried to limit the number of free people of color living in the state, by forcing former slaves to leave North Carolina and never return. It would have been difficult to expel "free negroes" who already lived in the State, but by forcing newly manumitted slaves out of the state, whites tried to slow the growth of North Carolina's free black population.

DIFFERENT PUNISHMENTS

Punishment by whipping was the most common type of punishment levied against black people, free or enslaved, in North Carolina. For slaves, this was the only practical option, because a slave had no property

and could not pay fines. The only other option would have been hard labor, but that was the essence of slavery.

At the same time state legislatures passed laws extending the number of offenses by which blacks could be whipped, courts became less likely to punish whites by the whip. The humiliation and bodily scars that came from whipping reinforced the differences between the races.

QUESTIONS TO CONSIDER

1. Why do you think whites wanted to limit the abilities of African Americans to meet in groups? To learn how to read? To travel within the state?
2. Why do you think legislators wanted to keep free people of color from socializing or marrying with enslaved people?
3. Why would lawmakers want emancipated slaves to leave the state? How might this law discourage slaves from trying to obtain their freedom through the courts?
4. What was the most common type of punishment for enslaved people? For black people? How were these punishments similar? Were there any differences?
5. For which offenses did these codes specify that a slave or a free person could be executed or killed?
6. When were slaves allowed a trial by jury? Who were the jury members? Would this system enable a slave to receive a fair trial?
7. Why do you think lawmakers forbade slaves and free persons of color from gambling or playing cards together?
8. Why would white lawmakers want to execute any person of color who raped a white woman, specifically? Why did they not set the same punishment for a rape of a woman of color, or pass a law that established the punishment for rapes committed by any man against any woman, regardless of race?
9. In what ways did these laws encourage white people to regulate the behavior of free blacks and slaves in their community?
10. In what ways were masters held responsible for the actions of their slaves?
11. What limitations were placed on masters who wished to free their slaves? Why do you think they made the process of freeing slaves so difficult?
12. A mulatto was defined as anyone whose ancestry was one-sixteenth African. Anyone who had just one great-great grandparent who had been African or African American, even if everyone else in the person's family tree was white, was therefore a person "of color." What does this tell us about the way white southerners thought about race?

Restrictions on slaves

Slaves not to go armed 25. No slave shall go armed with gun, sword, club or other weapon, or shall keep any such weapon, or shall hunt or range with a gun in the woods, upon any pretence whatsoever; and if any slave shall be found offending herein, it shall and may be lawful for any person or persons to seize, and take to his own use, such gun, sword or other weapon, and to apprehend and deliver such slave to the next constable, who is enjoined and required, without further order or warrant, to give such slave twenty lashes on his or her bare back, and to send him or her home: and the master or owner of such slave shall pay the taker-up of such armed slave the same reward as by this act is allowed for taking up runaways. (1741 c 35 s 35, 36, 37. 1831 c 44)

No slave to go off his master's plantation without leave in writing. 26. No slave shall go from off the plantation or seat of land where such slave shall be appointed to live without a certificate of leave, in writing, for so doing from his or her master or overseer. (1741 c 35 s 38)

- Slaves not to raise stock 27. No slave shall be permitted on any pretence whatever, to raise any horses, cattle, hogs or sheep, but all such belonging to any slave, or in any slave's mark, shall be seized and sold by the county wardens as directed in the act entitled an act concerning the Poor. (1741 c 35 s 39 1779 c 152 s 1)
- Slaves not fed &c. stealing corn 28. In case any slave who shall not appear to have been properly clothed and fed shall be convicted of stealing any corn, cattle, hogs or other goods whatsoever, from any person &c. injured person may sue the owner. not the owner of such slave, such injured person shall and may maintain an action of trespass against the master, owner, or possessor of such slave in the Superior or county court, and shall recover his or her damages with cost of suit. (1753 c 53 s 6)
- No slave to teach another 29. If any slave shall teach or attempt to teach, any other slave to read or write, the use of read. figures excepted¹, he or she may be carried before any justice of the peace, and on conviction thereof, shall be sentenced to receive thirty-nine lashes² on his or her bare back. (1830 c 6 s 2)
- Slaves not to sell spirituous 30. If any negro slave shall presume to sell any spirituous liquors by retail or otherwise, liquors. such slave so offending shall be taken before a magistrate of the county, where he may have committed such offence, and if found guilty, shall receive not exceeding thirty-nine lashes, on his or her bare back. (1818 c 974)
- Negroes not to meet for the 35. No person shall grant permission for any meeting or meetings of the negroes of purpose of dancing &c. without others, or people of colour, at his, her or their houses, or on his, her or their plantation written per mission. for the purpose of drinking or dancing, under the penalty of forfeiting twenty dollars on conviction of such offence, in any court having jurisdiction thereof, unless such slave shall have a special permit in writing or otherwise from his or her owner for that purpose.
Page 5 (1794 c 406 s 2)
- Slaves and free negroes not 36. It shall not be lawful under any pretence for any slave, or free person of colour to preach in public. to preach or exhort in public or in any manner to officiate as a preacher or teacher in any prayer meeting, or other association for worship where slaves of different families are collected together; and if any free person of colour shall be thereof duly convicted on indictment before any court having jurisdiction thereof, he shall, for each offence, receive, not exceeding thirty-nine lashes on his bare back; and where any slave shall be guilty of a violation of this act, he shall, on conviction before a single magistrate, receive not exceeding thirty-nine lashes on his bare back. (1831 c 4 s 1)
- Slaves entitled to trial by jury 47. In all cases where the county or superior courts shall have jurisdiction of offences the county and superior courts. committed by slaves, the slave charged shall be entitled to a trial by a jury of good and lawful men, owners of slaves. (1793 c 381 s 1 1831 c 30 s 5)

Runaways and insurrection

- Runaway slaves may 34. Whereas many times slaves run away and lie out hid and lurking in swamps, woods, outlawed in certain cases. and other obscure places, killing cattle and hogs, and committing other injuries to the inhabitants of this State; in all such cases, upon intelligence of any slave or slaves, lying out as aforesaid, any two justices of the peace for the county wherein such slave or slaves is, or are supposed to lurk or do mischief, shall, and they are hereby empowered and required to issue proclamation against such slave or slaves (reciting his, or their names, and the name or names of the owner or owners, if known) thereby

requiring him or them, and every of them forthwith to surrender him or themselves; and also to empower and require the sheriff of the said county to take such power with him as he shall think fit and necessary, for going in search and pursuit of, and effectual apprehending such outlying slave or slaves, which proclamation shall be published at the door of the court house, and at such other places as said justice shall direct. And if any slave or slaves against whom proclamation hath been thus issued, stay out and do not immediately return home, it shall be lawful for any person or persons, whatsoever to kill and destroy such slave or slaves, by such ways and means as he shall think fit, without accusation or impeachment of any crime for the same. (1741 c 35 s 40)

In cases of insurrection &c 55. In all cases of insurrection or rebellion, or of conspiracy to make insurrection, or to commission of Oyer and Terminer may issue. murder or rebel, or any such contemplated conspiracy, insurrection or rebellion, of any slave or slaves, upon the information and at the request of any five justices of the peace of the county in which such conspiracy, insurrection or rebellion shall happen or may be contemplated, the Governor for the time being, shall be authorised and have power to issue a commission of Oyer and Terminer³, to any one of the judges of the Superior Courts of Law; and in case the said judges are necessarily engaged on their circuits, the Governor shall be authorised and have power to issue a commission to one of the judges of the Supreme Court, whose duty it shall be to hold said court forthwith, and who shall be clothed with all the powers necessary for the trial of all such slave or slaves, as may be charged with any of the before mentioned offences. (1831 c 30 s 1)

Emancipation

How slaves may 59. Any inhabitant of this State desirous to emancipate any slave or slaves, shall file a petition, in writing in some one of the Superior Courts of this State, setting forth, as emancipated. near as may be, the name, sex, and age of each slave intended to be emancipated, and praying permission to emancipate the same; and the court before whom such petition shall be filed, shall grant the prayer thereof on the following conditions, and not otherwise, viz. That the petitioner shall shew that he has given public notice of his intention to file such petition at the court house of the county, and in the State Gazette, for at least six weeks before the hearing of such petition; and that the petitioner shall enter into bond with two securities⁴, each to be good and sufficient, payable to the State of North Carolina, in the sum of one thousand dollars for each slave named in the petition, conditioned that the said slave or slaves shall honestly and correctly demean⁵ him, her or themselves, while he, she or they shall remain within the State of North Carolina, and that he, she or they will, within ninety days after granting the prayer of the petitioner to emancipate him, her or them, leave the State of North Carolina, and never afterwards come within the same: Provided nevertheless, That no such emancipation shall in any manner whatever invalidate or affect the rights or claims of any creditor of such petitioner. (1830 c 9 s 1)

Emancipated slaves to leave 60. Any emancipation, granted to any slave or slaves, as herein directed, shall be upon the state in 90 days. express condition that he, she or they will leave the State within ninety days from the granting thereof, and never will return within the State afterwards. (1830 c. 9 s 2)

Slaves may be emancipated by last will.

It shall be lawful for any person by his or her last will and testament⁶ to direct and authorise his or her executor or executors, to cause to be emancipated any slave or slaves pursuant to this act; and such bequest or authority shall be good and available in law and equity, and shall justify said executor or executors in emancipating such slave or slaves at any time thereafter; provided, he, she or they, file his, her or their petition, and pursue the directions of this act in the same manner as if he, she or they, were the absolute owners of such slave or slaves: and provided further, that nothing herein contained shall be taken or held to interfere with the claims of creditors, or exempt any slave directed to be emancipated, from liability to the claims of creditors: and provided further, that any slave emancipated by an executor pursuant to the directions of the testator, shall be emancipated on the same conditions and under the same liabilities as herein before set forth: Provided further, That no permission shall be granted to any executor or executors to emancipate any slave or slaves under the directions of the last will and testament of his or their testator, before, the expiration of two years from and after the probate⁷ of said last will and testament, unless the said executor or executors, shall enter into bond with approved security to the State of North Carolina, in double the value of the slave or slaves proposed to be emancipated, conditioned to be answerable to the creditors of his, her or their testator for the value of the said slave or slaves. (1830 c 9 s 3)

Slaves over 50 may be emancipated for meritorious services.

It may be lawful to emancipate, upon petition filed, and under the order of any Superior Court of Law in this State, any slave over the age of fifty years, provided his or her owner, shall prove, by his own oath or otherwise, to the satisfaction of the court and jury, that said slave has performed meritorious services (which meritorious services must consist in more than mere general performance of duty:) Provided nevertheless, That the petitioner shall swear that he or she has not received in money or otherwise the price or value, or any part thereof, of said slave, or been induced to petition for his or her emancipation in consideration for any price paid therefor, or to be paid: and provided further, that before such slave shall be emancipated, the petitioner shall give bond and good security, in the sum of five hundred dollars, payable to the State of North Carolina, that said slave shall honestly and correctly demean him or herself so long as he or she shall remain in the State, and shall not become a parish charge; which bond may be sued upon in the name of the State to the use of the poor, or of any person injured by the mal-conduct of such slave. (1830 c 9 s 4)

Emancipated slaves leaving the state or returning to be arrested and sold.

If any slave shall refuse or neglect to leave the State within ninety days after permission to emancipate him or her has been granted as aforesaid by any Superior Court, or shall ever come within the State after having left it, it shall be the duty of any justice of the peace of any county wherein said slave may be found, to issue a warrant to arrest said slave, and he shall, upon proper proof being made of his or her having violated the provisions⁸ of this act, commit him or her to the jail of the county, there to remain until the next ensuing term of the Court of Pleas and Quarter Sessions, where an issue shall be made up and immediately tried, whether the accused has violated the provisions of this act; and upon the finding of the Jury that the accused has so done, he, she or they shall, by the said Court of Pleas and Quarter Sessions, be ordered to be sold, which sale shall vest an absolute right of property in the purchaser in and to the

accused, and the proceeds thereof be equally divided between the informer and the wardens of the poor of the county. (1830 c 9 s 5)

Free blacks

67. No free negro &c. to migrate into this state, 20 days after notice to remove from the State, or to be held to labour for 10 years or pay \$500. It shall not be lawful for any free negro, or mulatto to migrate into this State: and if he or she shall do so, contrary to the provisions of this act, and being thereof informed, shall not within twenty days thereafter, remove out of the state, he or she being thereof convicted in manner hereinafter directed, shall be liable to a penalty of five hundred dollars; and upon failure to pay the same, within the time prescribed in the judgment awarded against such person or persons, he or she shall be liable to be held in servitude, and at labor for a term of time not exceeding ten years, in such manner and upon such terms as may be prescribed by the court awarding such sentence; and the proceeds arising therefrom, shall be paid over to the county trustee for county purposes: Provided, That in case any free negro or mulatto shall pay the penalty of five hundred dollars, according to the provisions of this act, it shall be the duty of such free negro, or mulatto to remove him or herself out of this state within twenty days thereafter, and for every such failure, he or she shall be subject to the like penalty, as is prescribed for a failure to remove in the first instance. (1826 c 21 s 1)
68. How to proceed against a free negro &c. coming into this State. If any free negro, or mulatto, shall come into this State as aforesaid, he or she may be arrested upon a warrant from any justice of the peace, and carried before any justice of the peace of the county in which he or she may be arrested; who is hereby authorised and required to examine into the case; and if, upon such examination, it shall appear to him that the said free negro, or mulatto has come into this State contrary to the provisions of this act, he shall bind him or her over to the next county court of said county which shall happen thereafter, taking such security for his or her appearance as may be reasonable; and upon neglecting or refusing to give such security, the said justice shall commit such free negro or mulatto to the jail of the county, there to be confined until the next county court, unless, in the mean time, he or she shall give security as aforesaid: and at the said court, it shall be the duty of the said court, to inquire into the case; and if it shall appear to them that the said free negro or mulatto has migrated into this state contrary to the provisions of this act, they shall enter judgment against him or her for the aforesaid penalty, and may award execution thereon; and if he or she shall have no property, or not sufficient to satisfy the said debt, the said court shall adjudge, that the said free negro or mulatto shall be hired out for a term of time not exceeding that prescribed in the 67th section of this act, in such manner and upon such terms as may seem expedient to the said court. (1826 c 21 s 2)
69. Vagabond free negroes &c. how to be dealt with. If any free negro, or mulatto, in any county of this State, who is able to labour, shall be found spending his or her time in idleness and dissipation, or having no regular or honest employment or occupation which he or she is accustomed to follow, it shall and may be lawful for any citizen to apply to a justice of the peace of said county; and upon affidavit to obtain a warrant to arrest such person and bring him or her before some justice of said county; and if upon examination of the cause, it shall appear to said justice that the said free negro or mulatto comes within the provisions of this act, the said justice shall bind him or her with reasonable security to appear at the next

county court of said county; and in case he or she shall fail to give security, such free negro or mulatto shall be committed to the jail of the county until the next county court thereafter; and it shall be the duty of the said court, if upon examination of the case, he or she shall come within the meaning of this act, to require such free negro or mulatto to enter into bond with sufficient security, in such sum as may be considered by the court reasonable, payable to the State of North Carolina, conditioned for his or her good behaviour and industrious, peaceable deportment for one year: and in case he or she shall fail to give such security, or shall not pay the costs and charges of the prosecution, it shall be lawful for the said court, and they are hereby required to hire out such free negro, or mulatto for a term of time to service and labour, which to them may seem reasonable and just, and calculated to reform him or her to habits of industry and morality, not exceeding three years for any one offence. (1826 c 21 s 5)

Who shall be esteemed free negroes &c.

All free mulattoes descended from negro ancestors, to the fourth generation inclusive, though one ancestor of each generation may have been a white person, shall come within the provisions of this act. (1826 c 21 s 10)

Free negroes &c. going from this State to other States to return in 90 days.

If any free negro or person of colour who may be a resident of this State, shall migrate from this State and go into any other State, and shall be absent for the space of ninety days or more, it shall not be lawful for such free negro or person of colour to return to this State; and if any free negro or person of colour shall violate this section, he shall be liable to the same penalties as are prescribed for the punishment of free negroes and persons of colour who migrate to this State: Provided, that no person shall incur the penalties or disabilities prescribed in this section, if he or she shall have been prevented from so returning to this State by sickness or other unavoidable occurrence. (1830 c 14)

Free negroes not to intermarry with slaves.

It shall not be lawful for any free negro or free person of colour to intermarry or cohabit and live together as man and wife with any slave;⁹ and any free negro or person of colour so intermarrying or cohabiting and living as man and wife with a slave, shall be liable to indictment, and upon conviction shall be fined and imprisoned or whipt at the discreti[o]n of the court; the whipping not to exceed thirty-nine lashes: Provided, That this section shall not extend to any case where an intermarriage or cohabiting or living together took place before the passing of this act. (1830 c 4 s 3)

Assault by a free person of colour with intent to commit a rape on a white woman punishable with death. Free negroes &c. not to gamble with slaves.

Any person of colour convicted, by due course of law, of an assault with intent to commit a rape upon the body of a white female, shall suffer death without benefit of clergy. (1823 c 1229)

Free negroes &c. not to gamble with slaves.

It shall not be lawful for any free negro, mulatto or person of mixed blood, descended from negro ancestors to the fourth generation inclusive (though one ancestor of each generation may have been a white person) to play at any game of cards, dice, nine pins, or any game of chance or hazard, whether for money, liquor or any kind of property, or not, with any slave or slaves; and any free negro, mulatto or person of mixed blood as aforesaid, so offending, shall, upon conviction before any court having jurisdiction, receive a whipping, not exceeding thirty-nine lashes on his or her bare back. (1830 c 10 s 2)

Free negroes, &c. not to suffer slaves to gamble, in their houses &c.

If any free negro, mulatto or person of mixed blood as aforesaid, shall knowingly suffer any slave or slaves to play at any game of cards, dice, nine-pins or any game of chance or hazard, whether for money, liquor, or any kind of property, or not, in his or her house, or in the yard, field or garden attached or belonging to his or her house, he

- or she shall be liable to indictment in any court having jurisdiction; and upon conviction, the free negro, mulatto or person of mixed blood as aforesaid, shall receive a whipping on his or her bare back, not exceeding thirty-nine lashes. (1830 c 10 s 3)
- Free negroes &c. not to entertain slaves in their houses at certain times. 83. If any free negro or mulatto, shall entertain any slave in his or her house during the sabbath, or in the night between sun set and run-rise, he or she shall, for entertaining such slave, be subject to a fine of two dollars for the first offence, and four dollars for every subsequent offence, to be recovered on conviction before any one justice of the peace, and applied to the use of the poor of the county in which the offence shall be committed, saving to the party the right of appealing. (1787 c 287 s 2)
- Slaves not to trade with other slaves in prohibited articles. Penalty 84. If any slave shall buy or receive from any slave or slaves, or shall sell or deliver to any slave or slaves any of the property prohibited to be bought by or received from, or to be sold or delivered to any slave by any free white person, by the laws of this State, he or she, on conviction thereof before any justice of the peace, shall receive on his or her bare back, not exceeding thirty-nine lashes, well laid on by any constable of said county, or other person appointed for that purpose. (1826 c 13 s 4)
- Free negroes, &c. not to trade with slaves in prohibited articles Penalty. 85. If any free negro, or mulatto, shall trade with any slave, either by buying from, or selling to him or her any article of property prohibited to be sold to or bought from a slave by any white free person by the laws of this State, he or she may be presented by indictment in the county or Superior Courts; and on conviction, shall receive not less than thirty-nine lashes on his or her bare back. (1826 c 13 s 5 1828 c. 32 s 2)
- Parties entitled to an appeal 86. Either of the parties or master of the slave convicted under either of the two preceding sections shall be entitled to an appeal from the judgment of the justice or of the county court; and no indictment shall be prosecuted for so trading with a slave, unless the indictment be commenced within twelve months from the time of the offence committed. (1826 c 13 s 7 1828 c 32 s 3)
- Free negroes &c. not to peddle &c. without license. 87. It shall not be lawful for any free negro, mulatto, or free person of color, to hawk or peddle¹⁰ within the limits of any county in this State, without first obtaining a license from the court of Pleas and Quarter Sessions of the county in which they propose to hawk or peddle; which license shall be granted for one year only, and only when seven or more justices are present, and upon satisfactory evidence of the good character of the applicant, to be approved by said court; and for issuing such license the clerk shall be entitled to demand and receive from such applicant the sum of eighty cents: Provided nevertheless, That nothing in this act shall be construed so as to allow such person coming from another State to peddle in this State; and if any free negro, or free person of color shall offend against this section of this act, he or she shall be subject to indictment. (1831 c 28 1830 c 7)
- Fines on free persons of colour unable to pay how to be enforced. 88. When any free person of colour shall be convicted of any offence against the criminal laws of the State, and sentenced to pay a fine, and it shall appear to the satisfaction of the court, that the free person of colour so convicted is unable to pay the fine imposed, the court shall direct the sheriff of the county where such fine is imposed to hire out the free person of colour so convicted to any person who will pay the fine for his services for the shortest space of time. (1831 c. 13 s 1)¹¹

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Notes

1. A slave could be taught how to read numbers, but not words.
2. Thirty-nine may seem like an odd number to specify, but it comes from the Bible. According to tradition, Jesus was given thirty-nine lashes by the Romans before he was crucified, although the Bible doesn't say how many lashes he received. Jewish law limited a flogging to forty lashes (Deuteronomy 25:2-3).
3. *Oyer and Terminer* is an archaic legal term, inherited from the French and English, which means "to hear and determine." By issuing a commission of Oyer and Terminer, the governor empowered people to investigate alleged crimes. If the commission found that there had been illegal activities, then the people responsible were formally charged.
4. A bond was a legal document in which the master agreed to pay a certain amount of money if his former slave broke any laws or required any charity from the community.

The securities were a piece of property or a bank note (similar to a check) that was signed over to the state of North Carolina. The former master had to provide two securities each worth \$1000. The property or money would be taken from the master only if his former slave became a burden to the community. Since freed slaves were required to leave the state within 90 days, though, former owners probably only rarely lost the money they had posted.

5. *Demean* in this context means to behave.
6. This section may help you to understand what happened to Lucy, the "white" slave mentioned in this petition.
7. *Probate* was the legal process of proving the legitimacy of a will. In other words, people had to prove that the will was not forged, that it had been signed by the deceased person while he was of sound mind, and that he had not signed the will under the threat or violence. Usually this process was straightforward, but occasionally family members contested the will (tried to have it changed or thrown out), particularly if they did not want a slave to be emancipated.
8. Provisions in this context means a condition or requirement of a legal document.
9. How might this section have affected the petition of Ned Hyman asking for his manumission?
10. To hawk or peddle means to sell goods. A peddler traveled and sold goods from a cart.
11. Have you figured out by now what the notes in parentheses mean? They refer to the specific acts of the General Assembly that created the law. The years tell you when each law was originally passed. For example, #36 and #55 were both passed in 1831 — which might give you a clue about why they were passed. (What had just happened in 1831?)

Why do you suppose all these laws were collected in this way, when they had all been published individually in the years they were first passed?

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